

City of Brighton

*500 S. 4th Avenue
Brighton, CO 80601*



Meeting Agenda

Tuesday, November 18, 2014

7:00 PM

Council Chambers

City Council

MAYOR - RICHARD N MCLEAN

MAYOR PRO-TEM - KIRBY WALLIN

COUNCIL MEMBERS:

LYNN BACA, REX BELL, JW EDWARDS

MARK HUMBERT, JOAN KNISS, KEN KREUTZER

CYNTHIA A MARTINEZ

1. CALL TO ORDER

A. Pledge of Allegiance to the American Flag.

B. Roll Call.

2. CONSENT AGENDA

A. ID-235-14 Approval of the September 16, 2014 City Council Minutes

Attachments: [Minutes 9-16-14](#)

B. ID-247-14 Approval of the September 23, 2014 City Council Minutes

Attachments: [Sep23 14 Sp Mtg mrb rev 11 4 14](#)

C. ID-257-14 Approval of the October 7, 2014 City Council Minutes

Attachments: [Minutes 10-7-14](#)

3. APPROVAL OF REGULAR AGENDA

(Council may take a short break between 8:30–9:00 p.m.)

4. CEREMONIES

A. ID-250-14 Swear in Youth Commission and Youth Corps of Volunteers Members

B. ID-264-14 American Diabetes Month Proclamation

Attachments: [Diabetes Proclamation](#)

C. ID-265-14 Shop Small in Brighton Day Proclamation

Attachments: [Shop Small in Brighton Day - 2014](#)

D. ID-251-14 Introduction of New Employees by Human Resources Director Karen Borkowski Surine

5. PUBLIC INVITED TO BE HEARD ON MATTERS NOT ON THE AGENDA

(Speakers limited to five minutes)

6. PUBLIC HEARINGS

- A. **ID-242-14** AN ORDINANCE OF THE CITY COUNCIL AMENDING THE BRIGHTON MUNICIPAL CODE CHAPTER 8. HEALTH AND SAFETY, AMENDING ARTICLE 8-44, SMOKING PROHIBITED; TO INCORPORATE THE USE OF ELECTRONIC CIGARETTES, AND CHAPTER 17. LAND USE AND DEVELOPMENT CODE, AMENDING ARTICLE 17-12. DEFINITIONS; TO ADD A NEW DEFINITION REFERENCING THE MUNICIPAL CODE; AND SETTING FORTH DETAILS IN RELATION TO THE FOREGOING.

Attachments:

[CC Ordinance e-cigs final](#)

[PC Reso Final Signed Copy](#)

7. ORDINANCES FOR INITIAL CONSIDERATION

- A. **ID-261-14** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AMENDING THE BRIGHTON MUNICIPAL CODE SECTION 1-24-10 TO INCREASE THE FINES WHICH MAY BE IMPOSED BY THE MUNICIPAL COURT TO TWO THOUSAND SIX HUNDRED FIFTY DOLLARS (\$2,650); PROVIDING THAT HEREAFTER ANNUAL INCREASES OF THE MAXIMUM FINE TO BE DETERMINED BY THE INCREASE IN THE COST OF LIVING; GRANTING AUTHORITY TO SUSPEND ALL OR A PORTION OF THE SENTENCE AND GRANT PROBATION, ALL AS AUTHORIZED BY C.R.S. §13-10-113; AND SETTING FORTH DETAILS IN RELATION THERETO

Attachments:

[Municipal Court Fines - Ordinance](#)

- B. **ID-262-14** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AMENDING THE BRIGHTON MUNICIPAL CODE RELATED TO RECOVERY OF THE CITY'S COSTS OF CODE ENFORCEMENT AS SET FORTH IN SUBSECTIONS 8-8-80(1) AND (2), WEED ABATEMENT; 8-8-220(1) AND (2), TREES AND PLANTS; 8-16-85, LITTER AND TRASH; AND 8-24-160(1) AND (2), NUISANCES; AND SETTING FORTH DETAILS IN RELATION THERETO.

Attachments:

[Code Enforcement Fees - Ordinance](#)

- C. ID-258-14** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, REPEALING THE BRIGHTON MUNICIPAL CODE SECTION 9-12-20. VIOLATION AND PENALTY FOR TRESPASS AND ADOPTING A NEW SUBSECTION 9-12-10(c) SETTING PENALTIES FOR TRESPASS VIOLATIONS IN ACCORDANCE WITH ARTICLE 1-24 GENERAL PENALTY; ADOPTING SECTION 9-16-20 DISORDERLY CONDUCT SETTING FORTH WHAT CONSTITUTES DISORDERLY CONDUCT; AND ADOPTING SUBSECTIONS 9-16-90(a)(4) and (c) HARASSMENT TO INCLUDE ELECTRONIC FORMS OF HARASSMENT; REPEALING AND REENACTING OR AMENDING SECTIONS 9-16-51. PUBLIC INDECENCY, 9-16-52. INDECENT EXPOSURE, AND 9-16-53, PUBLIC URINATION AND DEFECATION; AND, SETTING FORTH DETAILS IN RELATION TO THE FOREGOING.

Attachments: [Disorderly Conduct - Ordinance](#)

- D. ID-205-14** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, ESTABLISHING CERTAIN BENEFITS FOR CITY PERSONNEL FOR THE 2015 BUDGET YEAR AND SETTING FORTH THE DETAILS RELATED THERETO

Attachments: [benefit summary-15](#)
[Ordinance - Fringe Benefits 2015](#)

8. RESOLUTIONS

- A. ID-241-14** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, CONFIRMING THE CITY OF BRIGHTON'S PARTICIPATION IN THE LINK PROGRAM IN CALENDAR YEAR 2015; APPROVING THE INTERGOVERNMENTAL AGREEMENT FOR THE PROVISION AND FUNDING OF JUVENILE ASSESSMENT SERVICES BY THE LINK; AUTHORIZING THE MAYOR TO EXECUTE SAID IGA ON BEHALF OF THE CITY; AND THE MAYOR WITH RATIFICATION BY CITY COUNCIL WILL APPOINT THE CITY OF BRIGHTON'S REPRESENTATIVE TO THE LINK BOARD FOR CALENDAR YEAR 2015

Attachments: [LINK 2015 IGA - Resolution 111814](#)
[LINK IGA corrected](#)

- B. ID-263-14** A RESOLUTION APPROVING THE ALLOCATION OF COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS FOR THE CITY OF BRIGHTON, COLORADO FOR THE FISCAL YEAR 2015; AND AUTHORIZING THE CITY MANAGER TO SIGN AND EXECUTE THE GRANT AGREEMENT ON BEHALF OF THE CITY

Attachments: [CDBG - Resolution](#)

9. UTILITIES BUSINESS ITEMS

- A. **ID-267-14** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AMENDING TITLE 13 OF THE BRIGHTON MUNICIPAL CODE PERTAINING TO WATER, WASTEWATER AND STORM DRAINAGE FEES AND CHARGES ASSESSED BY THE CITY OF BRIGHTON; SETTING FORTH EFFECTIVE DATES FOR SAID RATES, FEES AND CHARGES; AND, OTHER DETAILS RELATED THERETO

Attachments: [Water Rates - Ordinance](#)
 [Water Rates - Ex. 1](#)

10. GENERAL BUSINESS

- A. **ID-266-14** Schedule a Special City Council Meeting on November 25, 2014 at 6:00 p.m. for the purpose of reviewing Fringe Benefits, Amend the City Council Rules and Procedures, State Historic Fund Grant Agreement for Bromley Farm Phase 1 Interior, Adams County Grant Agreement for Pheasant Ridge Park Beautification Project and the Adams County Grant Agreement for Northgate Open Space Design and Construction

11. REPORTS

- A. By the Mayor.
- B. By Department Heads.
- C. By the City Attorney.
- D. By the City Manager.

12. REPORTS BY COUNCIL ON BOARDS & COMMISSIONS**13. EXECUTIVE SESSION**

- A. **ID-268-14** For a Conference with the City Attorney for the Purpose of Receiving Legal Advice on Specific Legal Questions Under C.R.S. Section 24-6-402(4)(b) Regarding City Council Rules and Procedures

14. ADJOURNMENT



Staff Report

File #: ID-235-14, **Version:** 1

Office of the City Clerk

Reference: Approval of the September 16, 2014 City Council Minutes

To: Mayor Richard N. McLean and Members of City Council

Through: Manuel Esquibel, City Manager

Prepared By: Natalie Hoel, City Clerk

Date Prepared: October 21, 2014

MINUTES OF THE REGULAR MEETING OF THE CITY COUNCIL
FOR THE CITY OF BRIGHTON, COUNTY OF ADAMS, STATE OF
COLORADO, HELD ON SEPTEMBER 16, 2014.

1. **CALL TO ORDER**

Mayor Pro Tem Wallin called the meeting to order at 7:03 p.m.

A. Pledge of Allegiance to the American Flag.

Councilmember Bell led the recitation of the Pledge of Allegiance to the American Flag.

B. Roll Call.

Council present: Mayor Pro Tem Wallin, Councilmembers Baca, Bell, Edwards, Humbert, Kniss, Kreutzer and Martinez.

Council absent: Mayor McLean (excused).

2. **CONSENT AGENDA**

A. Approval of the August 5, 2014 City Council Minutes.

B. Approval of the August 19, 2014 City Council Minutes.

Mayor Pro Tem Wallin read the Consent Agenda into the record.

Motion by Councilmember Humbert to approve the Consent Agenda as presented, **second by Councilmember Kniss.**

Voting aye: All present.

3. **APPROVAL OF REGULAR AGENDA** (Council will take a short break between 8:30–9:00 p.m.)

City Manager Manuel Esquibel asked that the Regular Agenda be amended to change the title of Item 8A and to add Business Regulations to the Executive Session.

Motion by Councilmember Martinez to approve the Regular Agenda as amended, **second by Councilmember Bell.**

Voting aye: All present.

4. **CEREMONIES**

A. Youth Protection & Bully Prevention Campaign Proclamation.

Mayor Pro Tem Wallin read the Proclamation into the record and presented it to Amanda Griffin, President Elect for the Brighton Kiwanis Club

Amanda Griffin gave a brief description of the events that will take place in October and thanked City Council for their support.

Motion by Councilmember Edwards, second by Councilmember Baca to approve the Proclamation.

Voting aye: All present.

B. National Preparedness Month Proclamation.

Mayor Pro Tem Wallin read the Proclamation into the record and presented it to Stephanie Hackett, Emergency Management Coordinator for the City of Brighton.

Stephanie Hackett, Emergency Management Coordinator thanked City Council for their support of this proclamation.

Motion by Councilmember Kreutzer, second by Councilmember Humbert to approve the Proclamation.

Voting aye: All present.

C. National Public Lands Day Proclamation.

Mayor Pro Tem Wallin read the Proclamation into the record and presented it to Parks and Recreation Director Gary Wardle.

Motion by Councilmember Baca, second by Councilmember Bell to approve the Proclamation.

Voting aye: All present.

D. Recognition of the City of Brighton for Market Day by Lee Grothe.

Brighton Jazz member Lee Grothe presented Market Day posters signed by the local growers featured on the posters to Mayor McLean, Gary Montoya, Mark Heidt and Teri Sanchez as a thank you for allowing Brighton Jazz to perform at Market Day. Mr. Grothe thanked them all for their hard work with the City and help putting on such a great event.

5. PUBLIC INVITED TO BE HEARD ON MATTERS NOT ON THE AGENDA (Speakers limited to five minutes)

Jim Ruhoff, 4817 Mt. Belford Drive, Brighton. Mr. Ruhoff asked for information regarding a letter he received from Mid Continent Energy and asked what the City is doing to regulate fracking and protect homeowners and schools in the City. City Attorney Margaret Brubaker referred Mr. Ruhoff to the Colorado Oil and Gas Commission website to find information and contact numbers for attorneys that specialize in oil and gas issues.

Jackie Kuusinen, Anythink Library, 327 Bridge Street. Ms. Kuusinen explained that it is the 5th Birthday for Anythink Library and explained a little about the “Outside the Lines” initiative that the Brighton library is participating in. Ms. Kuusinen encouraged everyone to visit the library and see what an important part of the community the library is.

Madonna McCollum, 753 Mockingbird Lane. Ms. McCollum expressed her concern regarding fracking wells and the number of spills that take place in Colorado each day and the lack of communication regarding these spills from the oil and gas industry. Ms. McCollum presented some written information to the City Clerk for distribution to City Council.

Keya Horiuchi, 735 South 8th Avenue. Ms. Horiuchi presented some written information to the City Clerk for distribution to the City Council and expressed her concern regarding fracking wells, health issues of people that live near fracking wells, water contamination from fracking and the need to have fracking wells further than 500 ft. from schools and homes.

6. **PUBLIC HEARINGS**

7. **ORDINANCES FOR FINAL CONSIDERATION**

8. **RESOLUTIONS**

A. A Resolution of the City Council of the City of Brighton, Colorado, Supporting the School District 27J November 2014 Bond Measure Election

Mayor Pro Tem Wallin read the title of the Resolution into the record.

Councilmembers Kreutzer and **Kniss** expressed their support for this Resolution.

School District 27J Superintendent Dr. Chris Fiedler, 1568 Wildflower Drive, Brighton. Dr. Fiedler explained that he is before the Council as a father, asking for support for this Resolution. Growth in the City of Brighton took off in 2000 and the number of students has tripled in size since then. The 27J schools are overcrowded and they have closed open enrollment to allow room for local kids to attend these schools. Dr. Fiedler explained that the City of Brighton and School District 27J are great partners and he thanks the City for considering this Resolution of support. Each of the five (5) Charter School Boards and the Brighton Economic Development Corporation has passed this Resolution of support and Commerce City will consider it on October 6, 2014. The Charter Schools in the area serve almost 4,000 of the 17,000 students in the area. In the absence of a successful bond this year the School District will explore other options like extended day and split schedules for high school and middle school students and year-round classes for elementary school students in the District.

Commerce City Councilwoman Jadie Carson, 11305 Paris Street, Commerce City. Councilwoman Jadie Carson representing the Colorado Classified School Employees Association explained that school employees see first-hand the needs of this District and because of that the Association unanimously supports this bond issue and will do everything they can to help its success.

Chris Warley a parent of two (2) children in School District 27J thanked City Council for helping to address the overcrowding of the 27J School District system. Mr. Warley referred City Council to the "I am 27J.org" website for information regarding the election and issues.

Terry Lucero, 839 Canary Lane, Brighton. Mr. Lucero explained that he and his family have been residents of Brighton and have attended Brighton schools for years. Mr. Lucero has children in the School District and feels the District and the City are in this together. The community must work together and work hard for this election because with the rate of growth in the City the District will not be able to make up the difference any longer and there will be hardships for everyone.

Dr. Fiedler thanked City Council for their support and recognizes that it is hard to ask for a raise in taxes.

Dr. Fiedler and Mr. Lucero answered questions from Council regarding:

- The renovations and new schools voters can anticipate seeing if the bond measure passes.

Motion by Councilmember Humbert to approve Resolution 2014-88 the title of which as read by Mayor McLean, **second by Councilmember Edwards.**

Voting aye: All present.

B. A Resolution of the City Council of the City of Brighton, Colorado, Authorizing the Submittal of a Hazard Mitigation Grant Application to the Colorado Division of Homeland Security and Emergency Management in the Amount of Approximately Two Hundred and Sixty Three Thousand Dollars (\$263,000.00), for the Addition of Three (3) Outdoor Warning Sirens, an Activation Encoder and Four (4) Upgrades to Existing Units; and Authorizing the City Manager to Execute the Grant Application.

Mayor Pro Tem Wallin read the title of the Resolution into the record.

City Manager Esquibel introduced Emergency Management Coordinator Stephanie Hackett.

Emergency Management Coordinator Stephanie Hackett explained that this is an application for a grant. The State of Colorado was awarded approximately 46 million dollars for hazard mitigation activities following the 2013 Colorado floods. A portion of this is within a section called “5% Projects” and the state has decided to award no more than 10% of the funds to these projects. One of the applicable categories in the 5% is for public and outdoor warning systems. This application is shared with the Brighton Fire Rescue and two (2) of the proposed sirens will be placed just outside of the city limits at the fire stations, one (1) at Prairie Center and four (4) of the existing sirens will be upgraded to an omni directional siren which are louder have a more consistent sound. If the City is awarded this grant FEMA will cover 75% of the cost, the State of Colorado will cover 12.5% and the City will be responsible for 12.5%. The grant is a reimbursement grant and the City portion is \$20,475.00. Emergency Management Coordinator Hackett answered questions from Council regarding:

- The City’s portion of the \$20,000.00

Motion by Councilmember Martinez to approve Resolution 2014-89 the title of which as read by Mayor McLean, **second by Councilmember Kreutzer.**

Voting aye: All present.

C. A Resolution of the City Council of the City of Brighton, Colorado, Authorizing the Reversion of One Million Seven Hundred Thirty-Eight Thousand Seven Hundred and No/100 Dollars (\$1,738,700.00) of the City’s Private Activity Bond Allocation for 2014 to the Statewide Balance.

Mayor Pro Tem Wallin read the title of the Resolution into the record.

City Manager Esquibel explained that each year the Federal Government allocates these bonds through the State of Colorado and they are made available to cities with a population over 25,000. This year the City’s allocation is \$1,738,700.00. The allocation is designed to support low income housing, industrial development bonds which support businesses that want to create opportunities in industry. The interest rates on these bonds are similar to what one could get at a bank. The State of Colorado authorized the City to determine if there are programs available; at this time the Housing Authority does not have a need for these funds. The amount of the allocation, 1.7 million, is not enough to go out for a bond issue, there would have to be several years of allocations set aside for a bond allocation.

The City has to go through the process of stating that there is not a need for the bond allocation at this time. The State of Colorado has asked that if the City cannot use this allocation at this time it will be returned to the statewide balance to be used by other entities. If the City does find a project where this allocation could be used the State of Colorado can be contacted to use this allocation and previous

allocations. This action will return the allocation to the statewide balance. City Manager Esquibel answered questions from Council regarding:

- Another project like Libretto being suitable for these funds.
- The City not turning down these funds, only stating that the City will not borrow these funds at this time.

Motion by Councilmember Kreutzer to approve Resolution 2014-90 the title of which as read by Mayor McLean, **second by Councilmember Edwards**.

Voting aye: All present.

9. UTILITIES BUSINESS ITEMS

Ordinances

Resolutions

10. GENERAL BUSINESS

11. REPORTS

A. By the Mayor – No report.

B. By Department Heads – City Manager Intern Murphy Robinson reminded everyone of the Good, Clean, Fun City Clean-up program on Saturday morning at 9:00 a.m.

C. By the City Attorney – No report.

D. By the City Manager – City Manager Esquibel reported that the meeting with School District 27J scheduled for September 30, 2014 has been canceled.

12. REPORTS BY COUNCIL ON BOARDS & COMMISSIONS

Councilmember Bell reported that the Housing Authority received spotless 2013 audit results. Councilmember Bell attended the Highway 85 Coalition Executive Community Meeting and CDOT presented the progress on the Highway 85 improvements. At this time there are 35,000 vehicles that travel through Brighton and that number will double by 2035, these are the challenges that are being addressed.

Councilmember Humbert attended the Parks and Recreation Facility planning meeting and a community survey will be sent soon. Councilmember Humbert celebrated events in three (3) different park facilities in Brighton and out of town guests were impressed with the City's parks. The heArt of Brighton is hosting an evening with Albin Wagner and Pat Reither on October 12th at the Armory.

Councilmember Baca will attend two (2) meetings in the coming weeks. The Good, Clean, Fun event is this Saturday along with Trash Bash.

Councilmember Edwards announced that the Eagle View Adult Center craft fair is on November 1st and all tables have been sold. Councilmember Edwards thanked United Power for donating the money for the table rental.

Councilmember Martinez participated in the ALS water challenge at the Eagle View Adult Center and it was very entertaining. The Brighton Housing Authority voucher program was a huge success and there are so many people with need for the vouchers for homes in the City.

Councilmember Kreutzer attended the car show at the Eagle View Adult Center, a great band performed. Councilmember Kreutzer also participated in the ALS ice bucket challenge and City Council challenged Fort Lupton and Lochbuie Councils. The Historic Preservation gala will take place on October 11th at the Armory and will be a raging 50's party. Councilmember Kreutzer attended a Parks and Recreation hearing for new facilities and it is interesting to see what ideas the community has for future parks in the City. Councilmember Kreutzer was a tour guide for the Historic Tour of Downtown Brighton, it was a great event.

Councilmember Kniss attended the Historic Tour and Downtown Brighton and Councilmember Kreutzer was a fabulous guide. The money raised through the Legacy Foundation will go to sponsor youth activities in the City and to scholarships. The Main Street Gallery was recently showcased in a national magazine. The art currently on display in City Hall will be gone soon for the new upcoming show, this has become a very popular event in the City, there were 460 items entered for consideration for the upcoming show. Councilmember Kniss thanked the Fire Department for their free community breakfast, it was a great event. Councilmember Kniss asked City Council if they would ask local resident Brian Arnold who was a participant in the American Ninja Warrior competition to come to a meeting and be recognized.

Councilmember Edwards agreed with Councilmember Kniss and gave a brief history of the American Ninja Warrior competition and the success Brian Arnold has had.

Mayor Pro Tem Wallin reported that the Youth Commission has conducted interviews to send members to the National League of Cities conference and there should be a strong delegation attending this year. During the interviews several students answered that they would like to go back to the 1950's when asked where they would go if they had a time machine. In order to send the maximum number of attendees to NLC the Youth Commission has engaged in a competition that NLC has offered to create a video about the future of Brighton. This video can be found on the City and Youth Commission Facebook pages so please vote for this video to send members to the NLC conference. The Historic Preservation 1950's gala will take place on October 11th. Friday the City will be hosting a delegation from Brazil to speak about efforts in their community to have government and schools work together.

13. EXECUTIVE SESSION

For a Conference with the City Attorney for the Purpose of Receiving Legal Advice on Specific Legal Questions Under C.R.S. Section 24-6-402(4)(b) Regarding Water and Business Regulations.

Motion by Councilmember Baca, second by Councilmember Martinez to go into Executive Session at 9:05 p.m.

Voting aye: All present.

14. ADJOURNMENT

Motion by Councilmember Martinez, second by Councilmember Kniss to adjourn at 9:06 p.m.

Voting aye: All present.

CITY OF BRIGHTON, COLORADO

DRAFT

By: _____
Kirby Wallin, Mayor Pro Tem

ATTEST:

Natalie Hoel, City Clerk

Approval Date



Staff Report

File #: ID-247-14, **Version:** 1

Department of City Clerk

Reference: Approval of the September 23, 2014 City Council Minutes

To: Mayor Richard N. McLean and Members of City Council

Through: Manuel Esquibel, City Manager

Prepared By: Natalie Hoel, City Clerk

Date Prepared: November 5, 2014

**MINUTES OF THE SPECIAL MEETING OF THE CITY COUNCIL FOR
THE CITY OF BRIGHTON, COUNTY OF ADAMS, STATE OF
COLORADO, HELD ON SEPTEMBER 23, 2014.**

1. CALL TO ORDER

Mayor McLean called the meeting to order at 7:25 p.m.

A. Roll Call.

Council present: Mayor McLean, Mayor Pro Tem Wallin, Councilmembers Baca, Bell, Edwards, Humbert, Kniss, Kreutzer and Martinez.

2. APPROVAL OF AGENDA

City Attorney Margaret Brubaker asked that the Agenda be amended to add General Business Item Appoint a Special Prosecutor for Municipal Court.

Motion by Mayor Pro Tem Wallin to approve the Agenda as amended, **second by Councilmember Humbert.**

Voting aye: All present.

3. EMERGENCY ORDINANCE

A. An Emergency Ordinance Pursuant to Section 5.10 of the City of Brighton Home Rule Charter Imposing a Temporary Six Month Moratorium on the Acceptance, Processing and Approval of any Application for a City of Brighton Permit or License Concerning the Operation of any Cyber Café, Sweepstakes Café, or Internet Sweepstakes Café, as those terms are used herein; Declaring the Intention of the City Council to Consider the Adoption of Appropriate Regulations Governing such Businesses to the Extent Allowed by Law: Directing the City Manager to Investigate the City's Authority to Regulate such Businesses and, if Deemed Appropriate, to Prepare Regulations for the City Council's consideration; and Setting Forth Other Details Related Thereto.

Mayor McLean read the title of the Ordinance into the record.

City Attorney Margaret Brubaker explained that cyber cafes including sweepstakes cafes and internet sweepstakes cafes have begun to appear across the country and on the front range of Colorado. They are generally storefront organizations with computer terminals that allow access to slot machine like games that dispense coupons for discounts on products or services. These cafes often advertise and sell a product for internet time or long distance telephone minutes and the user then receives supposed bonus entries in the internet sweepstakes. With these entries the user can participate in internet based games at the cafes on specially programmed personal computers. Based on a random allocation of winning and losing purchase entries the user may or may not win cash prizes through these games. Consumers are generally required to pay for the use of the computers and the internet access time or they can purchase telephone cards.

The existence of these cyber cafes has recently come to the attention of the City of Brighton. In order to get a general understanding of the scope of these businesses City staff and the City Attorney have reviewed various publications including a 2010 publication from the Regional Organized Crime Enforcement Center entitled "Internet Café Gaming Legal Fun or Illegal Gambling?", a document from the Lakewood Police Department entitled "White Paper on Cyber Cafes", and a general

compilation of information from the internet regarding internet sweepstakes parlors, these documents will be added to the record as Exhibits A, B and C.

Based on the information provided in these documents, it appears that cyber cafes tend to target low income and elderly consumers offering a gathering place and enticing consumers with the possibility of free or discounted goods or services. Although there have been legal challenges initiated in various parts of the country to date there is not a clear determination by the Courts or other governmental officials across the country on whether the activity conducted in these cyber cafes constitutes illegal gambling. Colorado officials including the Attorney General and the State Legislature have not yet taken any formal position on the legality of these businesses although some action is anticipated in the coming year. Legislation was introduced toward the end of the 2014 General Assembly of Colorado with bipartisan support and passed by a large margin by the House but it was then postponed indefinitely by the Senate. A copy of House Bill 14-1392 has been provided and will be included as part of the record as Exhibit D. Excerpts from House Bill 14-1392: *These machines, systems, and devices, ...appear designed to evade the existing constitutional and statutory regulations on gambling activity in Colorado and therefore are declared contrary to the public policy of this state. The gambling occurring at internet sweepstakes cafes has none of the protections that are afforded to players at legal gaming sites in Colorado. This absence of uniform regulation and ongoing, governmental oversight presents a danger to consumers throughout the state of Colorado. These sites comply with none of the regulatory requirements, such as surveillance and tracking of wagers and payouts, to assure consumers that gambling is being conducted fairly and honestly. The diversion of consumer dollars to these untaxed gambling activities not only presents the opportunity for theft but also undermines state and local programs that are funded by revenue derived from legalized gambling, including parks and recreation, historic preservation, and the state's general fund."*

The American Gaming Association issued a White Paper expressing concerns about cyber cafes including statements that the owners and principal managers are not licensed by any public agency and are therefore not subject to criminal background checks or investigation of their integrity. It also states that the games are not subject to oversight for fairness and the businesses do not pay any gaming taxes. There have been statements that cyber cafes have received scrutiny from law enforcement. The industry maintains that the business model and the systems used do not meet the legal definition of gaming in the United States because the prizes are predetermined and the chances are given without purchase. These sweepstakes parlors are often located in or adjacent to strip malls and the décor may consist of casino like motifs and complimentary snacks and non-alcoholic beverages are often provided to consumers. The software necessary to operate these cafes may be obtained from a number of different companies in return for which a percentage of the profits is typically paid.

These businesses are new to Brighton and there is no certainty at this time about the legality or illegality of these businesses, there are no regulations statewide or in Brighton to regulate these businesses. Because there is anticipation that the Attorney General will be issuing an opinion on this matter in the months to come, and there is an expectation that the General Assembly will take this matter up when it reconvenes for its next legislative session and because there are too many unanswered questions for the City to appropriately address any application for these businesses at this time, staff recommends that the City consider the legislation tonight. Included in the agenda packet is an Emergency Ordinance imposing a temporary six (6) month moratorium on the acceptance, processing and approval of any application for a permit or license concerning the operation of any cyber café, sweepstakes café, or internet sweepstakes café as those terms are defined in the Ordinance.

In order to give City staff time to research the extent and legality of these businesses, to investigate fully the potential impacts of these businesses on the citizens of Brighton, to research the authority of the City to regulate these businesses and to consider regulations governing these businesses, the six (6) month moratorium extends to March 18, 2015 unless extended or terminated by the City Council.

Cities across Colorado have routinely enacted moratoria of similar length with similar situations that require further research. City Attorney Brubaker feels that the emergency exists as provided in Section 5.10 of the City Charter and that this action is necessary for the immediate preservation of the public health, peace, safety and welfare of the citizens of Brighton and that the ordinance will be in full force and effect upon adoption. The City has not approved any applications for these types of businesses as of today and if the moratorium is imposed will not during the term of the moratorium.

Motion by Councilmember Martinez to approve Ordinance 2176 the title of which as read by Mayor McLean, **second by Councilmember Bell**.

Voting aye: All present.

4. GENERAL BUSINESS

A. Appoint a Special Prosecutor for Municipal Court.

City Attorney Brubaker explained that staff was informed that Prosecuting Attorney Adam Gollin has a conflict of interest and is unable to participate in a trial scheduled this Friday. It is required under the Charter and the Brighton Municipal Code that City Council is responsible for appointing attorneys as deemed necessary by the Council. City Attorney Brubaker recommends that it would be appropriate that a motion be made to appoint Brian McCoy as a Special Prosecutor in the Municipal Court to act in the stead of Adam Gollin if he is unable to perform his duties. A contract will be signed by the City Manager if this is approved. City Attorney Brubaker answered questions from Council regarding:

- This being a temporary contract.

Motion by Mayor Pro Tem Wallin, second by Councilmember Kreutzer to appoint Brian McCoy as a Special Prosecutor for the Municipal Court.

Voting aye: All present.

5. ADJOURNMENT

Motion by Councilmember Kreutzer, second by Councilmember Kniss to adjourn at 7:42 p.m.

Voting aye: All present.

CITY OF BRIGHTON, COLORADO

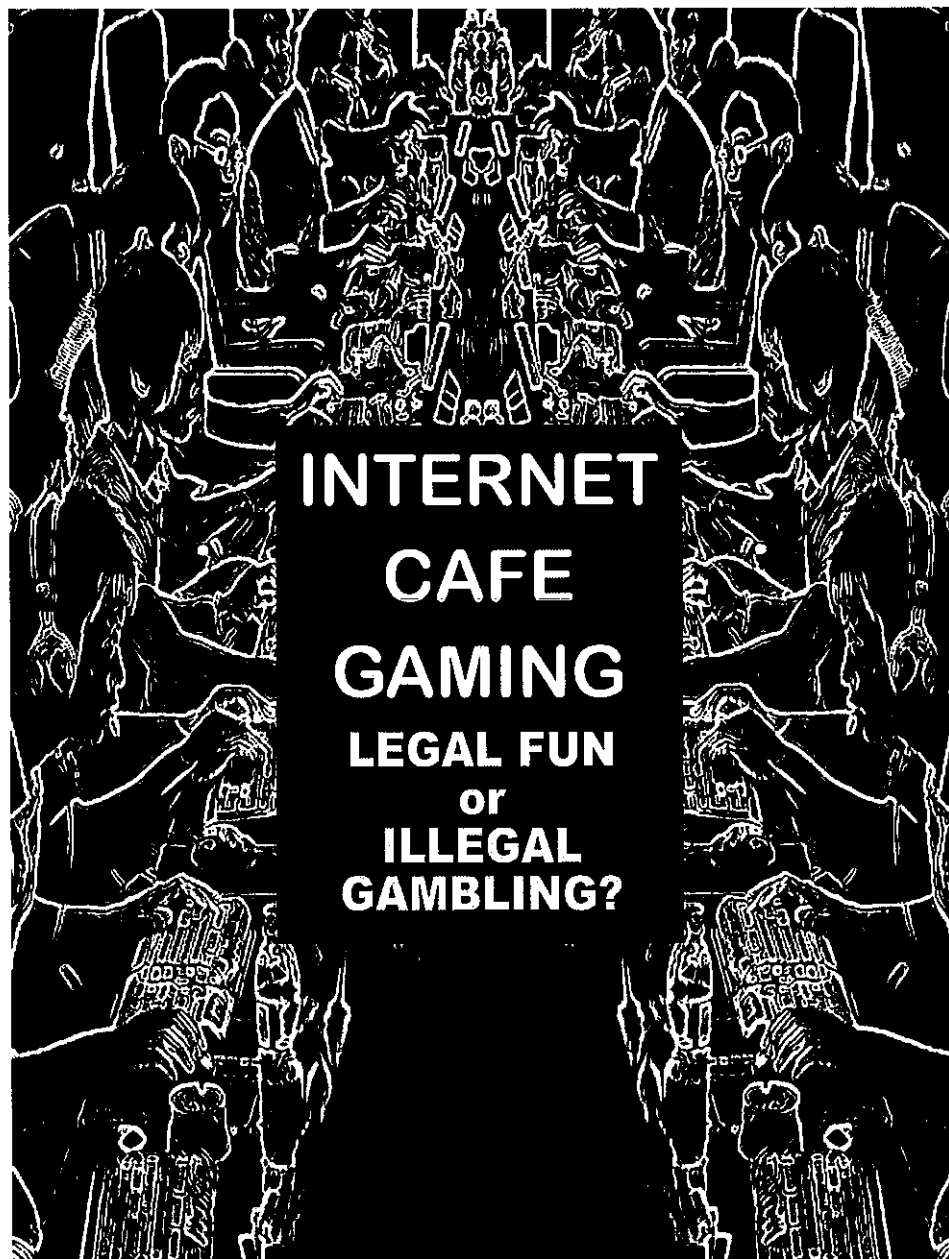
By: _____
Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

Approval Date

**Regional Organized Crime Information Center
SPECIAL RESEARCH REPORT**



By ROCIC Publications Specialist Angela Adams

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Regional Organized Crime Information Center
Internet Cafe Gaming: Legal Fun or Illegal Gambling?

Many customers go to Internet cafes looking for a place to catch up on email, read the latest news, or pay a bill. However, some Internet cafes have no visible computer towers, no keyboards, and no one is on the Internet at all. In these Internet cafes, customers are all playing mouse-controlled or touch screen computer games similar to slot machine games, and some customers are even getting money back before leaving the business. In fact, these Internet cafes may be illegal gambling fronts.

Although there are legitimate Internet cafes that sell Internet time and business services to customers, some Internet sweepstakes cafes such as the business described above are popping up all across the country, from California to Florida. Internet sweepstakes cafes claim to be selling Internet time or prepaid phone cards to walk-in consumers with an added chance to win prizes and/or cash by playing a “sweepstakes” game on the computer.

While all states have gambling legislation in place, it is unclear in some states whether Internet sweepstakes cafes are legal or illegal. “Activities like sweepstakes, promotions, and contests that appeal to the gambling instinct often have had a sordid legal history,” said Attorney Leanne Dodds of Lewis and Roca LLP in Arizona. “Most U.S. states have laws that generally prohibit gambling, but not all such activities are illegal. As long as the public has an unfulfilled demand for a gambling experience, entrepreneurs will continue to test the boundaries of legal sweepstakes and contests to meet these demands.”

Intelligence suggests that some Internet cafes are being used as fronts for illegal gambling and can create a higher potential for other crimes, such as embezzlement, fraud, identity theft, and robbery. Intelligence also suggests that, with a great amount of disposable income at hand, these Internet sweepstakes cafes may eventually (if not already) finance other crimes.

According to Forensic Examiner Deneen Hernandez, who examines gambling devices for the FBI Laboratory, “If these cafes remain in business, it may not be long until they are controlled by organized crime groups — the mob, motorcycle gangs, or terrorist organizations — who could use the money to fund drugs and weapons.”

Business Setup

Unlike bootlegging whiskey to back-room speakeasies, Internet sweepstakes cafe operators put their machines (computers equipped with a card reader and gaming software) up front and center in shopping centers and strip malls often situated in lower-income neighborhoods to target the poor.



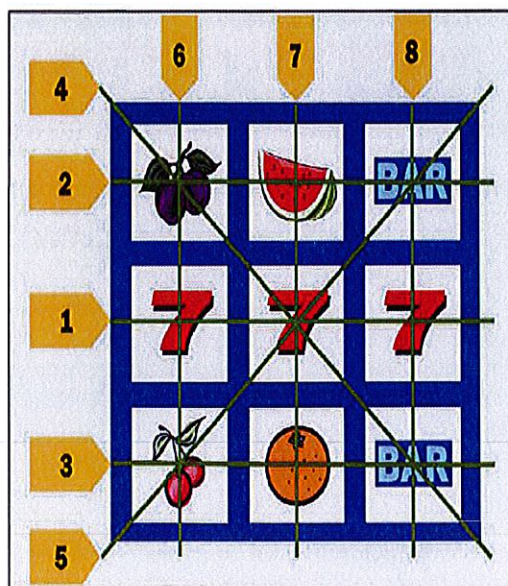
Customers pay the machine operator for “Internet time” or “long-distance pre-paid phone cards,” and the money is loaded onto an encoded card (similar to a credit card). The customer then selects a computer terminal, swipes the card, and starts playing what appears to be a slot machine video game. Depending on the customer’s success in the game, he can win tokens or points on the card, which can later be exchanged at the end of game play for cash.

According to cafe owners and machine leasing companies (which lease and install the computers and gaming software), customers purchase the phone cards or Internet time and receive “free entries” in sweepstakes games. “This engaging sweepstakes business allows customers the thrill of potentially

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"8-LINER" MACHINES

- Referred to as "Gray Area" Games
- Name derived from Cherry Master style games in 1980s
- Almost always have 8 win lines, but exceptions do exist
- Player is offered 8 win lines for betting purposes
- Machine layout strongly encourages player to wager on all 8 lines
- Most bonuses and pools are only available to the 8 line bettor



winning prizes,” according to machine leasing company Stuff About Games.

Unlike casinos, some Internet sweepstakes cafes tell patrons who win more than \$600 to take half the money now and half later. Any person winning more than \$600 is required to report the winnings to the IRS for tax purposes. Casinos give a W2G (an IRS form) to patrons to declare gambling winnings more than \$600. This is another way these sweepstakes cafes skirt law enforcement.

The National Council on Problem Gambling looked at the games featured at Internet sweepstakes cafes and deemed that they have the potential to be gambling games, which can be addictive. Patrons have lost hundreds, if not thousands, at these businesses.

Other concerns involve the potential for additional crimes. At some businesses, customers are asked to give personal information (e.g., a valid state driver's license) before playing the games, which could potentially lead to identity theft. And because this business is cash intensive, there is an increased risk for embezzlement, robbery, and assault when patrons who lose want their money back. Some cafe owners have even

requested police protection and escorts to the bank.

The Industry

Many in the “industry” of Internet sweepstakes are luring investors to own storefronts due to the high volume these stores have brought in. On average, a cafe owner gets a 10 percent cut of the end-revenue, which can total \$20,000 to \$30,000 per week. The machine leasing company retains 25 to 35 percent of the net revenue after the customers' winnings are paid.

All a cafe owner needs to get started is a \$15,000 to \$17,000 initial investment, which covers “software, equipment, installation, and administration costs,” according to Cash Out Gaming, LLC (<http://cashoutgaming.com>). In some locations, 15 machines are installed, with the possibility for more to be installed if the business performs well.

Once the business is operational, either an employee or the device itself records machine readings (which include credits going into and out of the machine) onto a pre-printed form provided by some leasing companies. The machine locations are also listed on the

Top Three Machine Leasing Companies

**Hest Technologies- North Carolina
World Touch Gaming- Georgia
Gametronics- Canada**

form. The completed form is placed inside an envelope along with the machine leasing company's cut of the money, and the money is either personally taken to the machine leasing company or deposited into their bank account.

Internet Gambling Cases

Six indicted in illegal gambling business operated throughout Texas

On Aug. 6, 2009, six individuals—Phillip D. Clark, Daniel P. Davis, Virginia Slaughter, Amirali Sumar, Mukahtiar Khuwaja, and Delores G. Ridens—were indicted and charged on four counts of operating an illegal gambling business, one count of conspiracy to operate an illegal gambling business, and three counts of money laundering in connection with their involvement in an illegal

gambling front. According to prosecutors, the investigation revealed a multi-million dollar gambling enterprise, which operated computerized gambling machines under the guise of Internet cafes and e-business centers. The businesses were located in Beaumont, Henderson, Port Arthur, and Nederland, Texas. The government is also seeking forfeiture of more than \$4.3 million in gambling proceeds. If proven guilty, this case could set a precedent for other states to follow in prosecuting those involved in running similar illegal gambling operations.

Four illegal gaming cafes targeted in Henry Co., Va.

One small restaurant and three Internet/photocopying businesses were the target of a 2009 case in Henry County, Va. All computer equipment was seized, and lab results regarding computer analysis is pending.

Cash seized, machines destroyed in Durham Co., N.C. gambling case

In 2008, an undercover operation on an Internet sweepstakes cafe in Durham Co., N.C. netted 15 defendants, 20 seized machines, and more than \$45,000 in cash.

CHARACTERISTICS OF GAMBLING DEVICES

Source: James Forshey and Daniel Olson, "Illicit Gambling." FBI- Racketeering Records Analysis Unit.

- The game's theme is similar to traditional gambling machines, such as slot, poker, and keno machines.
- The machine has a coin/paper/card acceptor that allows the player to initiate play of the game.
- The machine has the elements of consideration, chance, and reward (outlined in the Legislation section, see next page)
- If the machine does not dispense winnings, the machine has a feature that displays the accumulation of credits.
- If the machine does not dispense winnings, the machine has a device to eliminate winning credits. This is referred to as a "knock off" function.
- The machine accepts multiple wagers on a single game.
- The player cannot extend the duration of the game by virtue of skill.
- The player's skill has little or no effect on the outcome of the game.
- The machine has an electronic accounting system or similar device that tracks statistical information on the machine, such as the number of wagers placed and the payout made.

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Investigator Ray Richardson of the Durham County Alcoholic Beverage Control said that undercover agents entered Internet gaming stores, played the games, and later returned to make arrests. The defendants took a plea bargain, and the machines were destroyed.

Legislation

The U.S. has strict laws prohibiting private lotteries. Lotteries are promotions that have three elements:

- prizes
- winners chosen by chance
- consideration

Sweepstakes, such as the ones run at some Internet cafes, have prizes and arguably have winners chosen by chance. The biggest argument at Internet sweepstakes cafes involves consideration, which means that consumers have to pay or purchase a product to enter or improve odds in a sweepstakes.

In other words, legitimate sweepstakes award prizes solely by chance, and no fees or purchases increase the customer's odds of winning. Fraudulent sweepstakes, however, most always award prizes to "winners" after they've dipped into their pockets to enter a contest or collect their prize, which seems to be the case in many Internet gaming cafes.

To skirt law enforcement, the machine leasing companies say these games are part of a "sweepstakes," in which customers "reveal" what they have won by playing computer games, such as Blazing 7s or Keno, and asking the cashier to tell them their prize. The machine



A customer plays a sweepstakes game (below) at the EZ Access Internet sweepstakes cafe in Rocky Mount, N.C. (left).
(Source: The Rocky Mount Telegram)



Get Connected

Welcome Get Connected Customers!

Please Pay Special Attention to the following:

You Are Not Gambling!

We are in the business of selling prepaid long distance phone service and high speed internet access.

We promote and encourage the sale of these products with a promotional sweepstakes.

Please read the official sweepstakes rules.

You cannot purchase entries.

You may open your entries and reveal your prizes either:

- a) at the Point of Sale
- b) by using the ten, entertaining displays on one of our Participant Access Terminals.

Either way, your prizes are predetermined at the time of purchase or when your entry without a purchase is issued to you.

The method you choose to reveal your prize does not affect your chance of winning a prize.

The Participant Access Terminals are only an entertaining way to reveal to you what prize or prizes you have already won.

The fun entertaining displays on the Participant Access Terminals do not affect your chance of winning a prize.

Have Fun!

Internet cafe operators will typically post a sign, such as the one above, so that patrons don't think they are gambling.

Protecting Consumers from Phony Sweepstakes

Source: The Federal Trade Commission

Everyone loves to be a winner. A recent research poll showed that more than half of all American adults entered sweepstakes within the past year. However, consumers throughout the U.S. lose thousands of dollars every day in sweepstakes. Knowing the difference between legitimate and fraudulent activities is key.

- Legitimate sweepstakes don't require customers to pay for or buy something to enter or improve a customer's chances of winning. If customers have to pay to receive a prize, then it's not a prize at all.
- Sponsors of legitimate contests identify themselves prominently. For example, going to an Internet cafe where the business promotes AT&T or Comcast Internet. Fraudulent promoters are more likely to downplay their identities.
- Legitimate offers disclose the terms and conditions of the promotion clearly, including rules, entry procedures, and usually, the odds of winning.
- Fraudulent companies sometimes use a variation of an official or nationally recognized name to give customers confidence in their offers. It's illegal for a promoter to misrepresent an affiliation with or endorsement by a government agency or other well-known organization.
- Signing up for a sweepstakes at a public location, event, or online may subject customers to deceitful prize-promotion tactics. Customers may also run the risk of having personal information sold or shared with other marketers who later flood customers with offers and advertising.
- The Better Business Bureau and your local consumer protection office can help customers check out a sweepstakes promoter's reputation. Be aware that many questionable sweepstakes companies don't stay in one place long enough to establish a track record, and the absence of complaints doesn't necessarily mean the offer is legitimate.

leasing companies argue that "the computer games don't decide what a customer wins, which is different from outlawed video slot machines," and that they are simply revealing the sweepstakes wins and losses in an entertaining manner.

David Adinolfi, an assistant attorney general in North Carolina, believes differently. "Holding the sweepstakes out as free of charge (and appending a phone card to the scheme) is a transparent effort to dodge the strictures of the General Statutes ban on slot machines and video gaming machines," said Adinolfi (as quoted in the Greensboro (N.C.) *News and Record* newspaper). He also argued that the computers are being used as slot machines to dispense a prize in a game of chance, which makes it illegal.

One problem lies in the fact that the law is interpreted differently in each state and even local jurisdictions as to whether Internet sweepstakes cafes are legal or illegal. Internet sweepstakes cafes are so new that some states haven't considered statutes that are specific to them. Until they do, some prosecutors are apprehensive to prosecute using existing gambling statutes.

For example, there are currently no clear-cut laws in Virginia prohibiting or allowing Internet sweepstakes cafes, creating confusion about the legality of these businesses. Legislation attempting to further define illegal gambling to include these Internet sweepstakes cafes is in limbo as of March 2010.

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Inv. Richardson explained that prospective legislation in North Carolina may legalize these cafes so that the state will get a percentage of stores' revenue through taxation.

For information on Internet sweepstakes cafe legislation in your jurisdiction, contact your state's attorney, state attorney general's office, or your U.S. Attorney's Office.

Prosecutorial Aspects

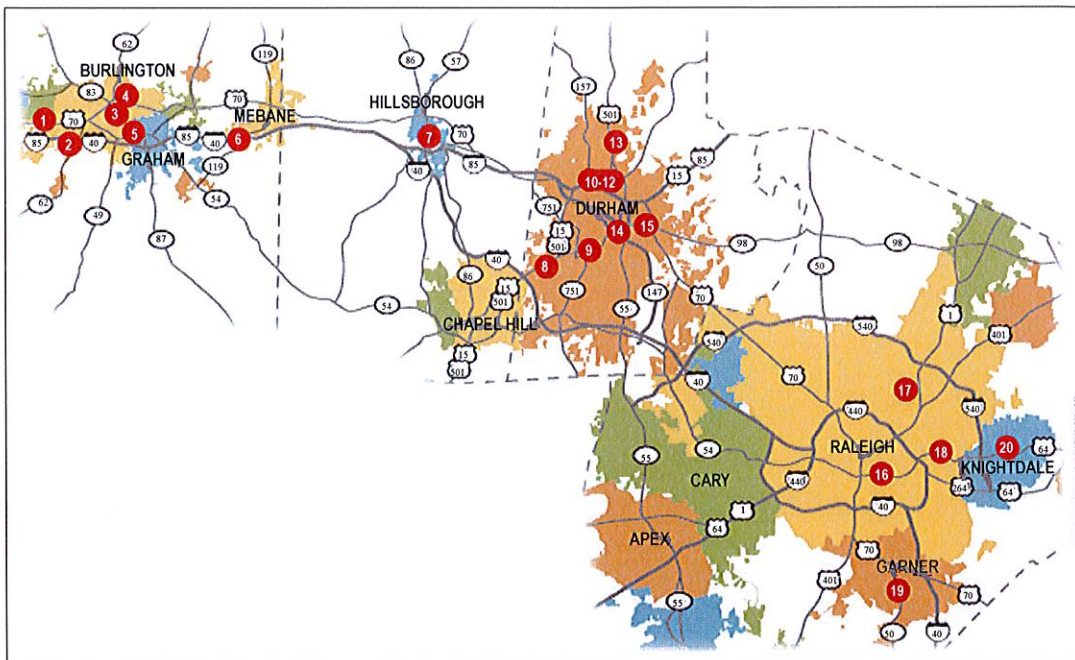
Machine leasing companies claim that Internet sweepstakes cafes are legitimate, and they provide policies and documents allegedly to that effect. For example, some leasing companies provide training booklets to employees, have drug-tolerance policies in place, and make employees clock in and out. Some companies also force employees to sign that they have read the employee manual/handbook. If these signed documents are seized, it can help the prosecution identify more defendants, helping to build a stronger case against the machine leasing company.

Keep in mind that the cafes are individually owned and operated and, therefore, are not connected with each other. However, they may be controlled by the same machine leasing company.

If and when the machines are seized in an investigation, the cafe owners are still required to pay for the leased machines. Most cafe owners sign a contract with the machine leasing company, agreeing to pay for the machines for a predetermined period of time regardless of where the machines are located—in the storefront or in police custody.

It is not uncommon for the machine leasing companies to produce prominent local attorneys and expert witnesses to represent their interests in local Internet cafe gaming prosecutions. In North Carolina, they successfully litigated to win injunctions from further law enforcement intervention.

According to the Virginia Fusion Center, there are several barriers to successfully prosecuting



Sweepstakes cafes in North Carolina have flourished, especially in the low-income areas pinpointed above.

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and shutting down illegal Internet gambling operations. For example, obtaining gambling information from a gambling machine seizure poses a challenge. Many machines have proven to be more technologically advanced than regular personal computers, which has made analysis of the machines difficult.

Another challenge is that the computer servers often reside at facilities in other states, meaning that they cannot be subpoenaed. Games are played entirely on the server, which retains the date and time the game was played, the serial number from the user's card, the amount wagered, and the amount won.

"The general use of more advanced technology by criminals is forecasted to increase," according to the Virginia Fusion Center. "Not only is basic technology itself advancing rapidly, but individuals and groups with ill intentions are also displaying innovation in applying programs, devices, and capabilities to meet their needs. Internet gambling appears to be one of these current trends. Law enforcement should be aware of the potential for seemingly innocuous business serving as fronts for illegal activity." Additionally, should law enforcement efforts falter, the overall criminal threat poised by these Internet cafes could rapidly expand, and much larger problems could arise.

The FBI Cryptanalysis and Racketeering Records Unit examines manually encrypted documents and records of illegal enterprises and provides expert testimony and other forensic assistance to further identify terrorism, foreign intelligence, and criminal activities in support of federal, state, local, and international law enforcement investigations and prosecutions. For their assistance in your Internet sweepstakes cafe prosecutions and/or investigations, contact the Unit at (703) 632-7334.

Investigative Aspects

Once legal aspects of these Internet

Items to Seize in Internet Sweepstakes Cafe Raid

One point-of-sale (POS) computer

One game terminal with associated tower(s)

Any magnetic-stripped or chip-encoded player cards

One money-loading machine (recharge kiosk)

Business documents to show payouts, contracts between owner and operator, user manuals, and/or money-collection reports

sweepstakes cafes in your state are determined, doing undercover work is the first step to investigating a potential illegal gambling business. This includes going to the business as many times as you can, playing the games, and either getting paid out more than what you put in or losing all of your money. You need to prove that you lost everything or that you got more than your initial investment.

Additionally, the undercover should be equipped with audio and video surveillance equipment to document everything. This includes talking with employees and patrons, showing the computer terminals and gaming devices, and documenting the wins and losses on the games. Moreover, in video surveillance or in court proceedings, do not state that the business is illegal, but explain how it operates makes it illegal. If you would like to borrow audio or video equipment, ROCIC can assist. Contact the ROCIC Technical Services Unit at (800) 238-7986 for more information.

An agency(s) can also set up an interdiction team(s) to follow the money trail. If money from an illegal activity is physically being

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taken across state lines by a courier, which is often the case when leasing companies are located in other states, interstate and foreign travel or transportation in aid of racketeering enterprises is occurring (18 USC 1952). If the money is being deposited through checks, trace the checks to see where they're going. You will often find the machine leasing company on the other end.

A Virginia Fusion Center report recommends the following when investigating Internet cafes potentially involved in illegal gambling:

- During a search warrant, attempt to seize both the gambling machine(s) and cash out machine(s)
- Indict owner, employees, and the corporate entity
- Contact the Internal Revenue Service to determine their willingness to be involved in the investigation.

If these investigative tactics don't work, you can enforce regulatory offenses, such as health or zoning codes, if nothing else. It may not be the straw that breaks their backs, but it will send the message that you have your eye on them.

Holden Beach, N.C. Mayor Alan Holden,

for example, said the town plans to "tighten ordinances, like limiting the number of electronic machines and whether a sweepstakes cafe can be built near a school or church, in hopes owners will choose to do business elsewhere."

Since Internet sweepstakes cafes are quickly popping up in many areas, law enforcement may become overwhelmed and/or uncomfortable with these cases. However, ROCIC is here to help. ROCIC's Analytical Unit can assist in the financial analysis of these cases through link analysis. The ROCIC Criminal Intelligence Unit can also assist in running intel on businesses, owners, operators, and articles of incorporation. In this manner, you might learn that your target is involved in activity in other jurisdictions, thus making a big case into an even bigger case. You can also post case information on RISSLeads, a nationwide electronic bulletin board that will allow you to communicate with other law enforcement agencies to "connect the dots."

For additional information on these and other ROCIC resources, please visit the ROCIC secure Intranet site, click on "Publications," and locate the ROCIC Services Resource Guide, or contact your Law Enforcement Coordinator.

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The site contains access to many other features, such as the RISSIntel intelligence databases, the RISSGang database, the RISSLeads electronic bulletin board, RISS ATIX (Automated Trusted Information Exchange), secure e-mail, law enforcement training announcements, and many more automated features.

Contact your ROCIC Law Enforcement Coordinator for more information on how to get connected with RISSNET.

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Lakewood Police

White Paper on Cyber Cafes Submitted by Sergeant Donia Amick at the request of Chief Kevin Paletta

Overview/Background

Cyber Cafes (Internet Sweepstakes Cafes or Sweepstakes Cafes) can be found in many states throughout the United States. Connecticut, Florida, New York, Ohio and North Carolina either currently allow these cafes or are in the process of trying to remove them due to new bans. In Colorado, these cafes can be found in Pueblo, Colorado Springs, Fort Collins, Aurora and Denver. One of the numerous businesses marketing these cafes, Cyber GT, has contacted the City of Lakewood and has requested local ordinances to regulate these cafes. CyberGT claims they want regulations to ensure legitimate businesses open Cyber Cafes in Lakewood and throughout the metropolitan area.

The cafes have a number of computerized machines that resemble slot machines in design. The cafes are typically located in a strip mall and open with little or no fanfare, while in most cases provide limited free food and beverages during the use of the sweepstakes machines. These cafes advertise and sell products, usually Internet time or long distance telephone minutes.ⁱ The customer will typically receive a certain number of free entries into the sweepstakes to play on the machine. For example, each day the customer goes into the café he/she receives 100 free entries to use on the machine. The customer can also buy internet or phone time to receive additional entries. Usually one minute of time will give the customer 100 additional entries and the "opportunity" to win sweepstakes prizes. The games on the machine vary from games of skill and games of chance. The customer pushes a button to see if he/she has won the sweepstakes prize. The client can purchase additional entries from the kiosk on site. The client can cash out his/her winnings at the end of the session and may redeem winnings for cash or prizes at a kiosk in the center.

There are concerns that these cafes may be targeting poor and elderly people as they are social places to gather and interact with others. The American Gaming Association describes how they work - "The cafes prominently advertise "internet sweepstakes" to lure customers into their stores. "Entries" into the sweepstakes are obtained by purchasing internet access time or long-distance telephone time, but the purchase of these "products" is just a ruse to connect customers with the casino-like games that are offered on rows of computers installed for that purpose."ⁱⁱ

The American Gaming Association white paper cites the following concerns with Internet sweepstakes cafes:

- Their owners and principal managers are not licensed by any public agency, so they are not subject to criminal background checks or investigation as to their business integrity.
- Their games and programs are not subject to any meaningful public oversight to ensure that they are fair to customers. If a customer believes she has been cheated, there is generally no public agency to which she can complain.
- They are not regulated by local zoning ordinances, so in many communities they may locate in any retail or commercial district.
- They need not report their results to any public entities. They have no obligation to exclude underage customers from gambling.
- When customers have difficulty controlling their gambling, the cafes have no obligation to provide information about treatment options.
- They do not pay gaming tax at the level that a commercial casino or other publicly licensed business would have to pay.ⁱⁱⁱ

State Actions

Ohio, Florida and Mississippi passed laws in 2013 banning Internet sweepstakes cafes and similar bans are pending this year in Connecticut and California.^{iv} A Tampa Bay Times article states, "...Gov. Rick Scott signed a bill that banned Internet sweepstakes in **Florida** (on 04/10/13)."^v The same article goes on to say that local law enforcement will be enforcing the laws and gave the following examples; "A spokesperson for the Hillsborough County Sheriff's Office said deputies will give warnings before arresting anyone. The Clearwater Police Department will inspect any open cafes and tell owners what is legal before making any arrests."^{vi}

The Targeted News Service writes, "**Ohio** Attorney General...announced that his office would begin enforcement efforts for Ohio's new internet sweepstakes café regulation...House Bill 7 gives the Attorney General's Office regulatory authority over sweepstakes terminal devices used by internet sweepstakes cafes...cafes are required to obtain a certificate of registration from the Attorney General's office and file monthly reports...The...Attorney General's Bureau of Criminal Investigation(BCI) also now will have explicit authority to investigate gambling law violation alleged to occur at internet sweepstakes cafes."^{vii}

According to a USA Today article, "... **Mississippi** has worked with localities to seize and destroy 176 electronic video monitors along with 10 computer servers that run the games that authorities say are illegal under its 2013 law banning Internet sweepstakes cafes. "Getting rid of the machines is more effective than prosecution," State Attorney General Jim Hood said. **California** counties have been shutting down sweepstakes cafes ever since the California Bureau of Gaming Control declared them illegal in late 2012. Some argue a state law is still needed to close loopholes..^{viii} According the American Gaming Association "In June (2009), police in San Diego and Stockton, Calif. raided several Internet cafes , making two arrests and seizing over 200 computers that allegedly were being used for online gambling. Although the cafes claimed that they were offering legal sweepstakes games, California Attorney General

Jerry Brown called them a spreading form of “unregulated and illegal gambling parlors, operating Las Vegas-style games.”...^{ix}

Michigan’s Attorney General, Bill Schuette, announced the Attorney General’s Alcohol and Gambling Enforcement Division has reached an agreement with Innovation Entertainment of Michigan that will halt operations at eight Internet sweepstakes cafes indefinitely... “Internet sweepstakes cafes that permit illegal gaming are nothing more than unregulated pop-up casinos and consumers should steer clear,” said Schuette.”^x

The Chicago Tribune wrote, “**Illinois** lawmakers promised years ago to finally get rid of video poker machines. In turn they legalized video gambling machines...this year lawmakers quietly approved a one-sentence change to the law—a move that may help usher in a new wave of slot like machines called ‘coupon kiosks’.”^{xi}

Court Rulings^{xii}:

Cyber Cafes viewed as lottery

State v. Vento 286 P.3d 627 **New Mexico** Court of Appeals (2012). The decision stated that a sweepstakes promotion, which was used to attract customers to defendant’s business was structured in the form of a “lottery;” the commercial gambling conviction that was potentially premised upon illegal betting was improper, as a matter of law, since defendant’s sweepstakes promotion was classified as a lottery; evidence was sufficient to support the necessary element of consideration, as required to establish that sweepstakes promotion was a lottery; and the State did not present sufficient evidence to establish that computer terminals used in defendants internet café met the definition of a “gambling device.”

US v. Davis 690 F.3d 330 **5th Circuit** Court of Appeals (2012). The decision stated that there is legally sufficient evidence from which a reasonable fact-finder could infer that the sale of internet time at the defendant’s cafes was an attempt to legitimize an illegal lottery. The main purpose and functions of Davis and Clark’s internet cafes was to induce people to play the sweepstakes, and that the internet time sold by the cafes—albeit at fair market value—was not the primary subject of the ***340** transaction, but instead a mere subterfuge.² We therefore determine a reasonable trier of fact could conclude that consideration was established beyond a reasonable doubt, and affirm Davis’ and Clark’s convictions for illegal gambling and conspiring to commit illegal gambling.

F.A.C.E. Trading, Inc. v Department of Consumer and Industry Services 270 Mich.App.653 **Michigan** Court of Appeals (2006). The decision states that the actions taken by the company amounted to a promotion of a lottery; the company’s promotion of sales of tabs was not a permissible game promotion; and the company’s sale of tabs was not permitted “promotional activity” under statute providing exception to prohibition of promotion or operation of lottery.

Cyber Cafes viewed as illegal slot machines

Moore v. Mississippi Gaming Commission 64 So.3d 537 Mississippi Court of Appeals (2011) The decision said that computer terminals seized from internet cafes were illegal “slot machines” under the Gaming Control Act.

Barber v. Jefferson County Racing Association 960 So.2d 599 **Alabama** State Court (2006). The decision stated that electronic readers together with computerized gaming network, constituted “slot machines”; and statutory definition of gambling was no unconstitutionally vague as applied.

Mississippi Gaming Commission v. Six Electronic Video Gambling Devices 793 So.2d 321 **Mississippi** Court of Appeals (2001). The decision stated that a machine that was operated by the insertion of coins, that dispenses a telephone long distance calling card with each operation, and that also dispensed a game card that potentially awarded a prize in varying values was a “slot machine” within the meaning of the criminal statute prohibiting of such machines in areas not authorized for casinos; even assuming Gaming Control Act definition of slot machine was applicable, the machine was still a slot machine; and the owner was not entitled to return phone cards, which were integral to determination that machine was a slot machine.

People ex rel. Lockyer 82 Cal.App.4th 699 **California** Court of Appeals (2000). The decision held that machines, which gave users an opportunity to obtain prize money purely by chance as a result of inserting money to purchase a calling card, was an illegal slot machine.

Cyber Cafes viewed as illegal gambling devices/exploits definition of gambling

Hest Technologies, Inc. v State ex rel Perdue 366 N.C. 289 **North Carolina** State Court (2012). The decision stated that the statute had a rational basis of addressing a specific type of sweepstakes operation that exploited a loophole in the state’s gambling laws but presented the same social evils as gambling, and, therefore, the statute was constitutional.

Allied Veterans of the World v. Seminole City, Florida 783 F.Supp.2d 1197 US District Court M.D. Florida (2011). The decision states that an ordinance banning simulated gambling devices did not violate First Amendment over breadth doctrine; did not violate the Equal Protection Clause; and did not violate the Due process Clause.

Sun-Light Prepaid Phonecard Co., Inc. v. State 600 S.E.2d 61 **South Carolina** State Court (2004). The decision states that the phone cards and electronic phone card dispensers violated statute governing illegal gambling devices.

Pre-paid Solutions v. City of Little Rock 34 S.W.3d 360 **Arkansas** State Court (2001). The decision states that the court held that the lessor and lessee of telephone –card vending machines were actually illegal gambling devices.

Jester v. State 64 S.W.3d 533 **Texas** Court of Appeals (2001). The decision states that evidence was both legally and factually sufficient to infer that the main purpose of defendant’s machines,

and his business, was to induce people to play games on his eight-liner machines, agreeing to gain or lose something of value at least partially by chance, rather than to promote telephone cards.

Colorado Position

State of Colorado Attorney General's Office—no official position at this time.

State of Colorado Bureau of Investigations—Has stated that this is a “gray area” and they are taking guidance from the Attorney General's office.

State of Colorado Division of Gaming—no official position at this time. They will take guidance from the Attorney General's office after the Attorney General's office has issued a position statement on the devices that may or may not determine if these machines are gambling devices.

State of Colorado Liquor Enforcement Division—will only give a position as to whether the devices are allowed in licensed liquor establishments. The Chief of Investigations has asked CyberGT, the group represented by Dan Corsentino, to request an official **Position Statement** from the liquor division. This request would require the liquor division to produce a position in 30 days as to whether the machines can lawfully reside in a licensed liquor facility. If the company does not agree with the position they can appeal to the state licensing authority in district court. At this time CyberGT has **not** requested a position statement. These machines are currently not allowed in licensed liquor establishments. The Liquor Enforcement Division Chief of Investigations said he does have a Declaratory Order on a similar machine called “Prize Farm” and that he would attempt to locate the position statement for that device.

Distributors/Manufactures/Investors/Vendors

The industry has maintained that the business model and the systems used do not meet the legal definition of gambling in the US. The federal definition characterizes gambling as meeting three criteria: consideration, prize, and chance. Sweepstakes cafe operators have contended that the prizes are predetermined, and therefore the system does not meet the criterion of chance. They have also held that chances are given even without purchase, and therefore the criterion of consideration is not met.^{xiii} The developers of the products claim the chance aspect of the game has been taken out and the winning/losing status of the game is predetermined therefore it is not gambling. They claim they can set up the machines to eliminate any chance thus making the machines no different from that of a sweepstakes game at McDonalds and that there are a set amount of prizes and no Random Number Generator (RNG) as typically seen in slot machines. Mr. Corsentino who is representing the groups as a private consultant has stated that a member of the legislature from Pueblo is going to introduce a bill next legislative session dealing with the regulation of these devises. The legislator wants to wait until next year given this year's session will soon come to a close. One of the vendors, Scott Brown from Scott Brown Enterprises said that if the state determines they do not want these machines in the Colorado to call him and he will come pick them up. He does not want his machines seized and is willing to work with the decision from the State of Colorado. This group has modified the

machines according to legal decisions throughout the United States and is working to apply the current legal decision to the machines.

Recommendation

After reviewing the previous information, it is my recommendation the City of Lakewood places a one-year moratorium on business licenses for any type of Internet Sweepstakes Café. First and foremost, this time frame will give the City of Lakewood time to analyze the legal opinions throughout the states and various municipalities. The 5th Circuit Court ruling has given a decision that is *persuasive*, but until the 10th Circuit Court gives a decision that is *binding* in Colorado there is room for additional interpretation. Secondly, A one-year moratorium will also give the state legislators time to introduce legislation and regulate these types of businesses if they chose to do so in next year's legislative session. And lastly, it will give the State of Colorado Attorney General's office and the applicable divisions time to study and provide Position Statements if requested.

An additional avenue is to contact the US Attorney's Office and ask for an official position on these cafes under code 18 USC section 1955 (a)(2) and 1953. Given the timeline of this assignment I was unable to follow up with Assistant United States Attorney Tim Neff.

If the cafes are considered legal by the State of Colorado I recommend staff from the City of Lakewood complete extensive backgrounds on the owners of the cafes and ensure they are monitored for any illicit activity with a fee structure that covers the costs of the application and background investigation.

ⁱ American Gaming Association White Paper Internet Sweepstakes Cafes: Unregulated Storefront Gambling in the Neighborhood David O. Stewart, Ropes & Gray, LLP p. 1

ⁱⁱ American Gaming Association (<http://www.americangaming.org>) Shut Them Down Global Gaming Business 3/28/14 Geoff Freeman

ⁱⁱⁱ American Gaming Association White Paper Internet Sweepstakes Cafes: Unregulated Storefront Gambling in the Neighborhood David O. Stewart, Ropes & Gray, LLP p. 1

^{iv} STATELING, The Daily News Service of the Pew Charitable Trusts, States Scramble to Stop Illegal Gambling at Internet Sweepstakes Cafes, 03/24/14, Pamela M. Prah

^v Tampa Bay Times Gov. Rick Scott signs Internet café ban into law. Mary Ellen, Danielle Paquette and Jimmy Geurts 4/10/13

^{vi} *ibid*

^{vii} Targeted News Service Attorney General DeWine Announces Enforcement Efforts Following New Internet Sweepstakes Law Dan Tierney 10/03/13

^{viii} USA TODAY, States battle illegal gambling at Internet Cafes, 03/24/14 Pamela M. Prah

^{ix} American Gaming Association Internet Gambling Cafes in California and Florida 6/1/09

^x Targeted News Service Schuette Announces Closure of Eight "Internet Sweepstakes Cafes" After Investigation Revealed Illegal Gambling Operations Joy Yearout 5/3/12

^{xi} Chicago Tribune Gaming Board calls influx of sweepstakes video games illegal Change in state law helping bolster cases for 'coupon kiosks' Joseph Ryan 12/30/13

^{xii} All cases researched and summarized by legal clerk for Attorney Janet Young, City of Lakewood, Colorado

^{xiii} Thompson, William N. (2001). *Gambling in America: an Encyclopedia of History, Issues, and Society*. Santa Barbara, Calif. [u.a.]: ABC-CLIO. pp. 416; 421.

9/16/14

INTERNET SWEEPSTAKES OUTLETS

Business model

A sweepstakes parlor sells a service or product, usually internet access or telephone cards. When a purchase is made, a number of chances to win prizes are given to the consumer. Proponents compare this practice to similar promotional giveaways by other businesses, such as McDonald's Monopoly game, which are legal in most areas.^[2] In one example of a sweepstakes parlor that sells phone cards, the operator gives away 100 chances for every dollar spent on a phone card.^[3] Chances may also be given without a purchase just for coming into the establishment.^[1]

Sweepstakes parlors are most often located in or adjacent to strip malls.^{[4][a]} Computer terminals are set up inside the parlors, where patrons can see if they have won a prize by playing a casino-style game, similar to a video slot machine. The decor of the cafes may also include casino-style elements and motifs.^[1] Complimentary snacks and non-alcoholic beverages are often provided to customers.

The software necessary to operate a sweepstakes parlor may be obtained from one of a number of companies; in return for providing the software, a percentage of the profits is typically paid. There are also installation companies that provide assistance in setting up cafes.^[1]

Legal challenges

Sweepstakes parlors have attracted scrutiny from law enforcement, and local and state legislators. In at least 20 states, the legality of the cafes has faced challenges in the form of criminal complaints, lawsuits, and bans.^[2]

The industry has maintained, at times successfully, that the business model and the systems used do not meet the legal definition of gambling in the US. The federal definition characterizes gambling as meeting three criteria: consideration, prize, and chance.^[6] Sweepstakes parlor operators have contended that the prizes are predetermined, and therefore the system does not meet the criterion of chance. They have also held that chances are given even without purchase, and therefore the criterion of consideration is not met.

Cases pertaining to the parlors have reached the state supreme courts of both Alabama and North Carolina. In Alabama, one operator's sweepstakes model was found to be in violation of state gambling laws.^{[7][b]} In North Carolina, the industry argued that a statute prohibiting sweepstakes from using an "entertaining display" violated their First Amendment rights, but the North Carolina Supreme Court disagreed.^[8] The sweepstakes industry is often prepared to respond to such obstacles. In Alabama, sweepstakes were restyled as bingo games.^[1] In North Carolina, "pre-reveal" software has been introduced that may allow parlors to comply with the statute by revealing the player's prize in plain text before the game is played.^[9]

The industry has formed lobbies to protect and promote their legal interests.^{[11][10]}

In 2013, sweepstakes parlors were banned in Florida, Ohio and several California municipalities.^[11]

Other opposition

Advocates for legal gaming also object to the parlors on the grounds that they are unregulated. They argue, among other things, that the sweepstakes parlors encroach on the business of state-run lotteries and licensed gambling, thus reducing the alleged benefits to public programs that get a portion of funds from legal gambling.^[12] In addition, in states where a compact exists under the Indian Gaming Regulatory Act, if sweepstakes parlors are not made illegal they may continue to conflict with the compact.

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MICHIGAN GAMING CONTROL BOARD

Internet Sweepstakes Cafes, Internet Cafes, and Cyber Cafes continue to generate considerable concern for governmental agencies and citizens with in the State of Michigan. Close consultation with the prosecutorial authority should always occur before and during investigations of these businesses.

For purposes of this guide, an Internet Sweepstakes Café, Internet Café, or Cyber Café is a business that offers customers internet access on computer terminals for a fee and provides games of chance for customers to play for a chance to win a prize. These establishments may be run under the false premise they are conducting legal promotional sweepstakes. But, there is no such exception for this type of gaming under Michigan law.

Unless authorized by statute, the Michigan Penal Code broadly prohibits any kind of gambling containing the elements of consideration, prize and chance.

There is, however, a very limited exception for certain promotional activity. Under MCL 750.372(2) a person may conduct a lottery or gift enterprise "as a promotional activity that is clearly occasional and ancillary to the primary business of that person." To fit within the exception, the activity must be calculated to promote the business, must not involve payment of money solely for the chance to win a prize, and must not involve purchase of a product or service for substantially more than fair market value.

The promotional lottery exception was addressed in a Court of Appeals decision involving illegal pull-tab games. *Face Trading Inc. v. Department of Consumer and Industry Services & Liquor Control Commission* 270 Mich App 653 (2006). The Court stated that for an activity to qualify for this exception, the activity must promote only one business or the products of that business, as opposed to promoting several businesses or products. The Court held that an activity is not clearly occasional and ancillary to the primary business of the person conducting the activity if the activity is conducted consistently and is a part of the primary business.

The term lottery is construed very broadly by Michigan courts with a view to declaring any such gaming illegal even when one of the three elements (i.e. consideration, prize and chance) may be missing. Attorney General v PowerPick Players Club of Michigan, LLC 287 Mich App 13 (2010).
If the lottery or gaming is part of the business and cash or other payoffs to winners are regularly occurring, the activity is most likely illegal.

**Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 14-1082.01 Duane Gall x4335

HOUSE BILL 14-1392

HOUSE SPONSORSHIP

Lawrence and Becker,

SENATE SPONSORSHIP

Grantham and Nicholson,

House Committees

Business, Labor, Economic, & Workforce Development

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING A PROHIBITION ON THE USE OF SIMULATED GAMBLING**
102 **DEVICES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billssummaries>.)

The bill declares that internet sweepstakes cafés and similar establishments in which simulated gambling devices are used to award prizes to customers do not comply with existing constitutional and statutory requirements for the conduct of licensed gambling activity in Colorado and, therefore, the operation of these businesses is contrary to

Shading denotes HOUSE amendment; Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
3rd Reading Unamended
May 1, 2014

HOUSE
Amended 2nd Reading
April 30, 2014

public policy.

The bill creates a new misdemeanor criminal offense of offering or providing the use of a simulated gaming device in exchange for any type of consideration, whether the consideration is technically classified as the price of using the device, the price of admission to premises on which the device is located, or the purchase price for an associated product or service.

Violations are punishable as a class 3 misdemeanor or by civil penalties and remedies including private damages of up to 3 times the losses suffered by an individual or licensed competitor, injunctions, and attorney fees. Internet service providers and others who only supply equipment, web design, or connectivity to an internet sweepstakes café are exempt unless their primary purpose is to support the conduct of gambling as a business.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, add article 10.5 to
3 title 18 as follows:

4 **ARTICLE 10.5**

5 **Simulated Gambling Devices**

6 **18-10.5-101. Legislative declaration.** (1) THE GENERAL
7 ASSEMBLY FINDS, DETERMINES, AND DECLARES THAT:

8 (a) RECENTLY, CERTAIN INDIVIDUALS AND COMPANIES HAVE
9 DEVELOPED ELECTRONIC MACHINES, SYSTEMS, AND DEVICES TO ENABLE
10 GAMBLING THROUGH PRETEXTUAL SWEEPSTAKES RELATIONSHIPS
11 PREDICATED ON THE SALE OF INTERNET SERVICES, TELEPHONE CARDS, AND
12 OTHER PRODUCTS AT BUSINESS LOCATIONS THAT ARE OR MAY BE
13 COMMONLY KNOWN AS INTERNET SWEEPSTAKES CAFÉS. THESE MACHINES,
14 SYSTEMS, AND DEVICES, AS MORE FULLY DESCRIBED IN THIS ARTICLE,
15 APPEAR DESIGNED TO EVADE THE EXISTING CONSTITUTIONAL AND
16 STATUTORY REGULATIONS ON GAMBLING ACTIVITY IN COLORADO AND
17 THEREFORE ARE DECLARED CONTRARY TO THE PUBLIC POLICY OF THIS

1 STATE.

2 (b) UNLAWFUL GAMBLING AT INTERNET SWEEPSTAKES CAFÉS
3 INVOLVES INTENTIONALLY USING ANY ELECTRONIC GAMING MACHINE,
4 COMPUTER TERMINAL, OR SIMILAR DEVICE TO CONDUCT A BUSINESS, OR
5 DIRECTLY ASSISTING OR AIDING AND ABETTING IN THE CONDUCTING OF
6 ANY BUSINESS THAT INTENTIONALLY USES AN ELECTRONIC GAMING
7 MACHINE, COMPUTER TERMINAL, OR SIMILAR DEVICE IF THE ELECTRONIC
8 GAMING MACHINE, COMPUTER TERMINAL, OR SIMILAR DEVICE DOES OR
9 PURPORTS TO DO ANY OF THE FOLLOWING:

10 (I) CONDUCT A SWEEPSTAKES THROUGH THE USE OF A SIMULATED
11 GAMBLING DEVICE OR PROGRAM, INCLUDING THE ENTRY PROCESS OR THE
12 REVEALING OF A PRIZE; OR

13 (II) PROMOTE A SWEEPSTAKES THAT IS CONDUCTED THROUGH THE
14 USE OF A SIMULATED GAMBLING DEVICE OR PROGRAM, INCLUDING THE
15 ENTRY PROCESS OR THE REVEALING OF A PRIZE.

16 (c) THE GAMBLING OCCURRING AT INTERNET SWEEPSTAKES CAFÉS
17 HAS NONE OF THE PROTECTIONS THAT ARE AFFORDED TO PLAYERS AT
18 LEGAL GAMING SITES IN COLORADO. THIS ABSENCE OF UNIFORM
19 REGULATION AND ONGOING, GOVERNMENTAL OVERSIGHT PRESENTS A
20 DANGER TO CONSUMERS THROUGHOUT THE STATE OF COLORADO. THESE
21 SITES COMPLY WITH NONE OF THE REGULATORY REQUIREMENTS, SUCH AS
22 SURVEILLANCE AND TRACKING OF WAGERS AND PAYOUTS, TO ASSURE
23 CONSUMERS THAT GAMBLING IS BEING CONDUCTED FAIRLY AND
24 HONESTLY. THE GENERAL ASSEMBLY FINDS THAT THESE DANGERS ARE
25 PROFOUND, PUTTING AT RISK THE FINANCIAL RESOURCES OF VULNERABLE
26 PERSONS AND CUSTOMERS WHO ARE USED TO WAGERING BASED ON CLEAR
27 REGULATORY STANDARDS AND WHO HAVE OFFICIAL LINES OF AUTHORITY

1 TO WHICH THEY MAY APPEAL WHEN THERE ARE QUESTIONABLE OR
2 ILLEGAL PRACTICES USED BY ANY LICENSED GAMING OPERATOR.

3 (d) THE PROLIFERATION OF INTERNET SWEEPSTAKES CAFÉS
4 PRESENTS AN INCREASING RISK TO CONSUMERS, PARTICULARLY AS THESE
5 SWEEPSTAKES CAFÉS HAVE SPREAD TO SITES THROUGHOUT THE STATE AND
6 ARE CAPABLE OF OPERATING WITHOUT FACING ADVERSE CONSEQUENCES
7 FOR THEIR ILLEGAL, UNFAIR, OR UNREGULATED ACTS.

8 (e) THE DIVERSION OF CONSUMER DOLLARS TO THESE UNTAXED
9 GAMBLING ACTIVITIES NOT ONLY PRESENTS THE OPPORTUNITY FOR THEFT
10 BUT ALSO UNDERMINES STATE AND LOCAL PROGRAMS THAT ARE FUNDED
11 BY REVENUE DERIVED FROM LEGALIZED GAMBLING, INCLUDING PARKS
12 AND RECREATION, HISTORIC PRESERVATION, AND THE STATE'S GENERAL
13 FUND.

14 (f) THERE IS NO ADEQUATE LOCAL OR FEDERAL REGULATION OF
15 INTERNET SWEEPSTAKES CAFÉS, AND THE ABILITY OF THE OWNERS OF
16 THOSE FACILITIES TO OPERATE IN ANY COMMUNITY IN THE STATE OR TO
17 MOVE THEIR OPERATIONS FROM ONE PART OF THE STATE TO ANOTHER
18 WITHOUT NOTIFYING ANY REGULATORY BODY MAKES THIS AN ISSUE OF
19 STATEWIDE CONCERN, APPROPRIATE FOR ACTION BY THE GENERAL
20 ASSEMBLY.

21 (g) THE VOTERS OF COLORADO HAVE CAREFULLY CHOSEN THE
22 FORMS OF GAMBLING TO WHICH TO GIVE THEIR APPROVAL AND THE
23 CONDITIONS UNDER WHICH THOSE FORMS OF GAMBLING MAY BE
24 CONDUCTED. AT NO TIME HAS THE QUESTION OF LEGALIZATION OF
25 INTERNET SWEEPSTAKES CAFÉS BEEN PRESENTED TO THE VOTERS OF THIS
26 STATE. WITHOUT A VOTE OF THE PEOPLE, THE STATE OF COLORADO
27 CANNOT PERMIT THE OPERATION OF UNAUTHORIZED, UNREGULATED, AND

1 UNSUPERVISED GAMBLING OR LOTTERIES IN VIOLATION OF SECTIONS 2 AND
2 9 OF ARTICLE XVIII OF THE COLORADO CONSTITUTION.

3 **18-10.5-102. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
4 CONTEXT OTHERWISE REQUIRES:

5 (1) "ELECTRONIC GAMING MACHINE" MEANS A MECHANICALLY,
6 ELECTRICALLY, OR ELECTRONICALLY OPERATED MACHINE OR DEVICE THAT
7 DISPLAYS THE RESULTS OF A GAME ENTRY OR GAME OUTCOME TO A
8 PARTICIPANT ON A SCREEN OR OTHER MECHANISM AT A BUSINESS
9 LOCATION, INCLUDING A PRIVATE CLUB, THAT IS OWNED, LEASED, OR
10 OTHERWISE POSSESSED, IN WHOLE OR IN PART, BY ANY PERSON
11 CONDUCTING THE SWEEPSTAKES OR BY THAT PERSON'S PARTNERS,
12 AFFILIATES, SUBSIDIARIES, AGENTS, OR CONTRACTORS. THE TERM
13 INCLUDES AN ELECTRONIC GAMING MACHINE OR DEVICE THAT:

14 (a) USES A SIMULATED GAME TERMINAL AS A REPRESENTATION OF
15 THE PRIZES ASSOCIATED WITH THE RESULTS OF THE SWEEPSTAKES
16 ENTRIES;

17 (b) USES SOFTWARE THAT SIMULATES A GAME THAT INFLUENCES
18 OR DETERMINES THE WINNING OR VALUE OF THE PRIZE, OR APPEARS TO
19 INFLUENCE OR DETERMINE THE WINNING OR VALUE OF THE PRIZE;

20 (c) SELECTS PRIZES FROM A PREDETERMINED, FINITE POOL OF
21 ENTRIES;

22 (d) USES A MECHANISM THAT REVEALS THE CONTENT OF A
23 PREDETERMINED SWEEPSTAKES ENTRY;

24 (e) PREDETERMINES THE PRIZE RESULTS AND STORES THOSE
25 RESULTS FOR DELIVERY AT THE TIME THE SWEEPSTAKES ENTRY IS
26 REVEALED;

27 (f) USES SOFTWARE TO CREATE A GAME RESULT;

1 (g) REQUIRES A DEPOSIT OF ANY CURRENCY OR TOKEN OR THE USE
2 OF ANY CREDIT CARD, DEBIT CARD, PREPAID CARD, OR OTHER METHOD OF
3 PAYMENT TO ACTIVATE THE ELECTRONIC GAMING MACHINE OR DEVICE;
4 (h) REQUIRES DIRECT PAYMENT INTO THE ELECTRONIC GAMING
5 MACHINE OR DEVICE OR REMOTE ACTIVATION OF THE ELECTRONIC GAMING
6 MACHINE OR DEVICE UPON PAYMENT TO THE PERSON OFFERING THE
7 SWEEPSTAKES GAME;
8 (i) REQUIRES PURCHASE OF A RELATED PRODUCT WITH LEGITIMATE
9 VALUE IN ORDER TO PARTICIPATE IN THE SWEEPSTAKES GAME, OR MAKES
10 A RELATED PRODUCT AVAILABLE FOR NO COST BUT UNDER RESTRICTIVE
11 CONDITIONS;
12 (j) REVEALS A SWEEPSTAKES PRIZE INCREMENTALLY EVEN
13 THOUGH THE PROGRESS OF THE IMAGES ON THE SCREEN DOES NOT
14 INFLUENCE WHETHER A PRIZE IS AWARDED OR THE VALUE OF ANY PRIZE
15 AWARDED; OR
16 (k) DETERMINES AND ASSOCIATES THE PRIZE WITH AN ENTRY OR
17 ENTRIES AT THE TIME THE SWEEPSTAKES IS ENTERED.
18 (2) "ENTER" OR "ENTRY" MEANS THE ACT OR PROCESS BY WHICH
19 A PERSON BECOMES ELIGIBLE TO RECEIVE ANY PRIZE OFFERED IN A GAME
20 PROMOTION OR SWEEPSTAKES.
21
22 (3) "PRIZE" MEANS ANY GIFT, AWARD, GRATUITY, GOOD, SERVICE,
23 CREDIT, OR ANYTHING ELSE OF VALUE THAT MAY BE TRANSFERRED TO A
24 PERSON, WHETHER OR NOT POSSESSION OF THE PRIZE IS ACTUALLY
25 TRANSFERRED OR PLACED ON AN ACCOUNT OR OTHER RECORD AS
26 EVIDENCE OF THE INTENT TO TRANSFER THE PRIZE. "PRIZE" DOES NOT
27 INCLUDE FREE OR ADDITIONAL PLAY OR ANY INTANGIBLE OR VIRTUAL

1 AWARD THAT CANNOT BE CONVERTED INTO MONEY OR MERCHANDISE.

2 (4) "SIMULATED GAMBLING DEVICE" MEANS A MECHANICALLY OR

3 ELECTRONICALLY OPERATED MACHINE, NETWORK, SYSTEM, PROGRAM, OR

4 DEVICE THAT DISPLAYS SIMULATED GAMBLING DISPLAYS ON A SCREEN OR

5 OTHER MECHANISM AT A BUSINESS LOCATION, INCLUDING A PRIVATE CLUB,

6 THAT IS OWNED, LEASED, OR OTHERWISE POSSESSED, IN WHOLE OR IN

7 PART, BY ANY PERSON CONDUCTING THE GAME OR BY THAT PERSON'S

8 PARTNERS, AFFILIATES, SUBSIDIARIES, AGENTS, OR CONTRACTORS. THE

9 TERM INCLUDES:

10 (a) A VIDEO POKER GAME OR ANY OTHER KIND OF VIDEO CARD

11 GAME;

12 (b) A VIDEO BINGO GAME;

13 (c) A VIDEO CRAPS GAME;

14 (d) A VIDEO KENO GAME;

15 (e) A VIDEO LOTTO GAME;

16 (f) A VIDEO ROULETTE GAME;

17 (g) A POT-OF-GOLD;

18 (h) AN EIGHT-LINER;

19 (i) A VIDEO GAME BASED ON OR INVOLVING THE RANDOM OR

20 CHANCE MATCHING OF DIFFERENT PICTURES, WORDS, NUMBERS, OR

21 SYMBOLS;

22 (j) A PERSONAL COMPUTER OF ANY SIZE OR CONFIGURATION THAT

23 PERFORMS ANY OF THE FUNCTIONS OF AN ELECTRONIC GAMING MACHINE

24 OR DEVICE AS DEFINED IN THIS SECTION;

25 (k) A SLOT MACHINE; AND

26 (l) A DEVICE THAT FUNCTIONS AS, OR SIMULATES THE PLAY OF, A

27 SLOT MACHINE.

1 (5) "SWEEPSTAKES" MEANS ANY GAME, ADVERTISING SCHEME OR
2 PLAN, OR OTHER PROMOTION THAT, WITH OR WITHOUT PAYMENT OF ANY
3 CONSIDERATION, ALLOWS A PERSON TO ENTER TO WIN OR BECOME
4 ELIGIBLE TO RECEIVE A PRIZE.

5 **18-10.5-103. Prohibition - penalties - exemptions.** (1) A
6 PERSON COMMITS UNLAWFUL OFFERING OF A SIMULATED GAMBLING
7 DEVICE IF THE PERSON OFFERS, FACILITATES, CONTRACTS FOR, OR
8 OTHERWISE MAKES AVAILABLE TO OR FOR MEMBERS OF THE PUBLIC OR
9 MEMBERS OF AN ORGANIZATION OR CLUB ANY SIMULATED GAMBLING
10 DEVICE WHERE:

11 (a) THE PAYMENT OF CONSIDERATION IS REQUIRED OR PERMITTED
12 FOR USE OF THE DEVICE, FOR ADMISSION TO PREMISES ON WHICH THE
13 DEVICE IS LOCATED, OR FOR THE PURCHASE OF ANY PRODUCT OR SERVICE
14 ASSOCIATED WITH ACCESS TO OR USE OF THE DEVICE; AND

15 (b) AS A CONSEQUENCE OF, IN CONNECTION WITH, OR AFTER THE
16 PLAY OF THE SIMULATED GAMBLING DEVICE, AN AWARD OF A PRIZE IS
17 EXPRESSLY OR IMPLICITLY MADE TO A PERSON USING THE DEVICE.

18 (2) UNLAWFUL OFFERING OF A SIMULATED GAMBLING DEVICE IS A
19 CLASS 3 MISDEMEANOR.

20 (3) WITHOUT REGARD TO ANY PENALTY IMPOSED UNDER
21 SUBSECTION (2) OF THIS SECTION, THE ATTORNEY GENERAL AND EACH
22 DISTRICT ATTORNEY MAY APPLY TO THE DISTRICT COURT OF ANY DISTRICT
23 IN WHICH A PERSON WHO VIOLATES SUBSECTION (1) OF THIS SECTION IS
24 LOCATED, ADVERTISES FOR CUSTOMERS OR MEMBERS, OR DOES BUSINESS
25 FOR APPROPRIATE ADDITIONAL RELIEF, INCLUDING:

26 (a) INJUNCTIVE RELIEF, INCLUDING A TEMPORARY RESTRAINING
27 ORDER OR PRELIMINARY OR PERMANENT INJUNCTION, TO RESTRAIN AND

1 ENJOIN VIOLATIONS OF THIS SECTION;

2 (b) DAMAGES, UP TO AND INCLUDING THREE TIMES THE TOTAL

3 DOLLAR AMOUNT OF BUSINESS TRANSACTED OR FACILITATED BY ANY

4 PERSON WHO VIOLATES SUBSECTION (1) OF THIS SECTION, PAYABLE TO THE

5 LOCAL JURISDICTION IN WHICH THE PERSON IS LOCATED, ADVERTISES FOR

6 CUSTOMERS OR MEMBERS, OR DOES BUSINESS; AND

7 (c) SUCH OTHER AND FURTHER RELIEF AS THE DISTRICT COURT

8 DEEMS APPROPRIATE.

9 (4) ANY PERSON WHO SUFFERS ANY ASCERTAINABLE LOSS OF

10 MONEY OR OF ANY TANGIBLE OR INTANGIBLE PERSONAL PROPERTY AS A

11 RESULT OF ANY VIOLATION OF THIS SECTION AND WHO ALSO HOLDS A

12 LICENSE TO OFFER GAMBLING SERVICES UNDER COLORADO LAW MAY

13 APPLY TO THE DISTRICT COURT OF ANY DISTRICT WHERE THE PERSON WHO

14 VIOLATES SUBSECTION (1) OF THIS SECTION IS OR WAS LOCATED,

15 ADVERTISES FOR CUSTOMERS OR MEMBERS, OR DOES BUSINESS FOR

16 APPROPRIATE ADDITIONAL RELIEF, INCLUDING:

17 (a) INJUNCTIVE RELIEF, INCLUDING A TEMPORARY RESTRAINING

18 ORDER OR PRELIMINARY OR PERMANENT INJUNCTION, TO RESTRAIN AND

19 ENJOIN VIOLATIONS OF THIS SECTION;

20 (b) DAMAGES UP TO AND INCLUDING THREE TIMES THE ACTUAL

21 DAMAGES SUSTAINED AS A RESULT OF VIOLATIONS OF THIS SECTION;

22 (c) REASONABLE ATTORNEY FEES AND COSTS; AND

23 (d) SUCH OTHER AND FURTHER RELIEF AS THE DISTRICT COURT

24 DEEMS APPROPRIATE.

25 (5) THE COURT MAY AWARD REASONABLE ATTORNEY FEES AND

26 COSTS TO A DEFENDANT FOR ANY ACTION FILED PURSUANT TO SUBSECTION

27 (4) OF THIS SECTION THAT WAS SUBSTANTIALLY GROUNDLESS,

1 SUBSTANTIALLY FRIVOLOUS, OR SUBSTANTIALLY VEXATIOUS.

2 (6) A CRIMINAL CONVICTION AGAINST A NAMED DEFENDANT
3 UNDER SUBSECTION (2) OF THIS SECTION IS PRIMA FACIE EVIDENCE OF THE
4 LIABILITY OF THAT NAMED DEFENDANT IN AN ACTION BROUGHT UNDER
5 SUBSECTION (3) OR (4) OF THIS SECTION.

6 (7) A CIVIL ACTION UNDER THIS SECTION MUST BE FILED, IF AT ALL,
7 WITHIN ONE YEAR AFTER THE ACT OR TRANSACTION GIVING RISE TO THE
8 CAUSE OF ACTION.

9 (8) CONDUCTING OR ASSISTING IN THE CONDUCT OF GAMING
10 ACTIVITIES OTHERWISE AUTHORIZED BY COLORADO LAW IS NOT A
11 VIOLATION OF THIS SECTION.

12 (9) NOTHING IN THIS SECTION:

13 (a) PROHIBITS, LIMITS, OR OTHERWISE AFFECTS ANY PURCHASE,
14 SALE, EXCHANGE, OR OTHER TRANSACTION RELATED TO STOCKS, BONDS,
15 FUTURES, OPTIONS, COMMODITIES, OR OTHER SIMILAR INSTRUMENTS OR
16 TRANSACTIONS OCCURRING ON A STOCK OR COMMODITIES EXCHANGE,
17 BROKERAGE HOUSE, OR SIMILAR ENTITY;

18 (b) LIMITS OR ALTERS IN ANY WAY THE APPLICATION OF THE
19 REQUIREMENTS FOR SWEEPSTAKES, CONTESTS, AND SIMILAR ACTIVITIES
20 THAT ARE OTHERWISE ESTABLISHED UNDER THE LAWS OF THIS STATE; OR

21 (c) PROHIBITS ANY ACTIVITY AUTHORIZED UNDER ARTICLE 35 OF
22 TITLE 24 OR ARTICLE 9, 47.1, OR 60 OF TITLE 12, C.R.S.

23 (10) THE PROVISION OF INTERNET OR OTHER ON-LINE ACCESS,
24 TRANSMISSION, ROUTING, STORAGE, OR OTHER COMMUNICATION-RELATED
25 SERVICES OR WEB SITE DESIGN, DEVELOPMENT, STORAGE, MAINTENANCE,
26 BILLING, ADVERTISING, HYPERTEXT LINKING, TRANSACTION PROCESSING,
27 OR OTHER SITE-RELATED SERVICES BY A TELEPHONE COMPANY, INTERNET

1 SERVICE PROVIDER, SOFTWARE DEVELOPER OR LICENSOR, OR OTHER PARTY
2 PROVIDING SIMILAR SERVICES TO CUSTOMERS IN THE NORMAL COURSE OF
3 ITS BUSINESS DOES NOT VIOLATE THIS SECTION EVEN IF THOSE CUSTOMERS
4 USE THE SERVICES TO CONDUCT A PROHIBITED GAME, CONTEST, LOTTERY,
5 OR OTHER ACTIVITY IN VIOLATION OF THIS ARTICLE; EXCEPT THAT THIS
6 SUBSECTION (10) DOES NOT EXEMPT FROM CRIMINAL PROSECUTION OR
7 CIVIL LIABILITY ANY SOFTWARE DEVELOPER, LICENSOR, OR OTHER PARTY
8 WHOSE PRIMARY PURPOSE IN PROVIDING SUCH SERVICE IS TO SUPPORT THE
9 OFFERING OF SIMULATED GAMBLING DEVICES.

10 **SECTION 2. Effective date.** This act takes effect July 1, 2014.

11 **SECTION 3. Safety clause.** The general assembly hereby finds,
12 determines, and declares that this act is necessary for the immediate
13 preservation of the public peace, health, and safety.



Staff Report

File #: ID-257-14, **Version:** 1

Department of City Clerk

Reference: Approval of the October 7, 2014 City Council Minutes

To: Mayor Richard N. McLean and Members of City Council

Through: Manuel Esquibel, City Manager

Prepared By: Natalie Hoel, City Clerk

Date Prepared: November 7, 2014

**MINUTES OF THE REGULAR MEETING OF THE CITY COUNCIL
FOR THE CITY OF BRIGHTON, COUNTY OF ADAMS, STATE OF
COLORADO, HELD ON OCTOBER 7, 2014.**

1. CALL TO ORDER

Mayor McLean called the meeting to order at 7:00 p.m.

A. Pledge of Allegiance to the American Flag.

Councilmember Humbert led the recitation of the Pledge of Allegiance to the American Flag.

B. Roll Call.

Council present: Mayor McLean, Mayor Pro Tem Wallin, Councilmembers Baca, Bell, Edwards, Humbert, Kniss, Kreutzer and Martinez.

2. CONSENT AGENDA

A. Approval of the September 2, 2014 City Council Minutes.

City Clerk Natalie Hoel read the Consent Agenda into the record.

Motion by Councilmember Kniss to approve the Consent Agenda as presented, **second by Councilmember Kreutzer.**

Voting aye: All present.

3. APPROVAL OF REGULAR AGENDA (Council will take a short break between 8:30–9:00 p.m.)

City Manager Manuel Esquibel informed City Council that there is not a need for the scheduled Executive Session.

Motion by Councilmember Humbert to approve the Regular Agenda as amended, **second by Councilmember Bell.**

Voting aye: All present.

4. CEREMONIES

A. Recognition of Eagle Scout Ryan Mellin.

Mayor McLean read the recognition and presented it to Eagle Scout Ryan Mellin.

Eagle Scout Ryan Mellin introduced his parents.

B. Recognition of Brian Arnold, Ninja Warrior.

Mayor McLean read the recognition for Brian Arnold, Mr. Arnold was not present at the meeting.

C. Community Planning Month Proclamation.

Mayor McLean read the Proclamation into the record and presented it to Community Development Director Holly Prather and Assistant City Manager of Development Marv Falconburg.

Motion by Councilmember Martinez, second by Councilmember Kniss to approve the Proclamation.

Voting aye: All present.

Community Development Director Holly Prather and Assistant City Manager of Development Marv Falconburg thanked City Council for approving this Proclamation.

D. Introduction of New Employees by Chief of Police Clint Blackhurst.

Chief of Police Clint Blackhurst introduced John Staton, Code Enforcement Officer, Ashton Steely, Police Officer, Steve Berlanga, Police Officer and David Kornowski, Police Officer and gave a brief history of their background.

Mayor McLean and City Council welcomed the new employees to the City of Brighton.

5. PUBLIC INVITED TO BE HEARD ON MATTERS NOT ON THE AGENDA (Speakers limited to five minutes)

Nancy Besaw, 717 South 12th Avenue, Brighton, Colorado. Ms. Besaw expressed her concern regarding the vague requirements for a person to run for City Council in the City of Brighton Charter.

Kathryn Lawrence, 9482 East 146th Avenue, Brighton. Ms. Lawrence asked that City Council and the City Attorney investigate Councilmember Martinez to verify her residency and eligibility to represent the City as a Councilmember.

Vicki Frese, 270 North Main Street. Ms. Frese expressed her concern regarding the residency of Councilmember Martinez.

6. PUBLIC HEARINGS

A. American Pride PUD.

- 1. An Ordinance of the City Council of the City of Brighton, Approving a Zone Change Request from C-2 (Restricted Retail and Services) to PUD (Planned Unit Development) for the Approximately 1.4233 Acre Property known as Lots 1 and 2, Block 1, of the American Pride Subdivision, and more Particularly Described as being Located within the Southwest Quarter of Section 7, Township 1 South, Range 66 West of the 6th Principal Meridian, City of Brighton, County of Adams, State of Colorado.**

Mayor McLean read the title of the Ordinance into the record.

Mayor McLean opened the public hearing at 7:32 p.m. and City Clerk Natalie Hoel verified the required postings and publications (September 18, 2014 in the *Banner*) for this public hearing were completed.

City Manager Esquibel introduced Associate Planner Cathy Sexton.

Associate Planner Cathy Sexton explained that she will be presenting the PUD and the Vested Property Rights. The applicant is Jerry Davidson with Perception Design Group, Inc., the owner is Fulton & Bromley, LLC by Edgemark Development, LLC its manager. The request is to hold a public

hearing to consider the proposed rezoning and vested property rights application. Notice of the public hearing was posted on the property on September 10, 2014, published in the *Banner* on September 18, 2014 and property owners within 300' were sent notification on September 17, 2014. Staff has not received any public comments however a nearby property owner asked for a copy of the PUD. The property is located south of Cherry Place, north of Bromley Lane and adjacent to the Fulton Avenue alignment. The property is approximately 1.42 acres and is currently zoned C-2 (Restricted Retail and Services). The properties to the north and east are zoned R-1 (Single-Family Residential), the property to the south and west are zoned I-1 (Light Industrial).

The Comprehensive Plan designates this property as being appropriate for Mixed Use, Residential, Commercial and Office and the planning area designates this site as being in the City Core Planning Area which is intended to maintain its basic character with an emphasis on improving the appearance, vitality and function of the area and improving pedestrian systems and lessening traffic congestion. The property consists of two (2) triangular shaped lots which are part of the American Pride subdivision. There is an existing access road that runs diagonally through the middle of the site and connects to a signalized intersection at Bromley Lane. The access road is established by a private access agreement with the Agfinity site to the west of the property. The request is to rezone the property from C-2 to PUD (Planned Unit Development). The proposed PUD would allow for the creation of one (1) lot which would be accomplished by an administrative plat amendment. The zone change would allow for the realignment of access to the north and east of the property and also provides for access near the front of the property to connect to the traffic signal. The proposed PUD establishes allowable uses which are those uses allowed in the C-3 zone district with some exceptions. It also provides standards for maximum lighting levels and maximum light pole height and provides architecture standards in addition to the Commercial Design Standards. It provides for landscaping standards that require a xeric landscaping plan and addresses buffering requirements.

The applicant is requesting a three (3) year vesting period which will provide assurance that the PUD will remain in effect for an adequate period of time to develop the site. The proposed PUD is generally in conformance with the PUD approval criteria. The PUD addresses a unique situation as the site contains the access road through the middle of it and it is subject to buffering requirements which make a large portion of the lot unusable. It integrates and provides connection to adjacent developments with the allowance to realign the access road through the site and maintains trails currently on the site. The proposed PUD also mitigates impacts by restricting uses such as drive-in windows, menu boards and accessory car washes to the west side of the property away from adjacent residences, it limits the lighting levels and height of light poles and requires a xeric landscaping plan. Staff finds that the PUD is in conformance with the Comprehensive Plan and the Plan designates this area as appropriate for Mixed Use, Residential, Commercial and Office. There is only one (1) lot in the development and it will be used for commercial purposes. It also complies with the policies associated with the City Core Planning Area as the development of this site will improve the appearance of the Bromley Lane corridor and maintains the access road and trails throughout the site. The site specific plan (PUD) is in conformance with the provisions outlined in Article 17-56, Vested Property Rights in the Municipal Code. The Planning Commission recommends approval of the PUD with conditions and recommends approval of the Vested Property Rights for a period of three (3) years and those conditions have been met by the applicant. Staff recommends approval of the proposed PUD and Vested Property Rights for a standard period of three (3) years for the American Pride PUD.

Mayor McLean asked if the applicant would like to add anything to the presentation.

Richard Sapkin, Edgemark Development, 410 17th Street, Suite 1705, Denver, CO 80202. Mr. Sapkin explained that this property was purchased two (2) years ago from FDIC. Edgemark worked closely with Agfinity/American Pride Co-op to help make this property a usable retail development. A road was put in that bisects the property and has made the property unusable. Mr. Sapkin has worked closely with staff to be able to utilize the property and that is the reason the applicant has asked for

the PUD zoning. This will hopefully help to attract various retailers and help with additional development along the Bromley Lane corridor.

Mayor McLean asked if anyone in the audience had questions for the applicant.

Alma Olivas, 98 Cherry Place. Ms. Olivas lives east of this property and asked if there will be parking developed for the site. **Associate Planner Sexton** explained that there will be parking on the site. Ms. Olivas asked what will be facing her house when the development is completed. Associate Planner Sexton explained that there is not a user at this time so there is no way to know what the development will be.

Michelle Pace, 847 South 2nd Avenue. Ms. Pace asked if there will be traffic going onto Cherry Place. Richard Sapkin explained that there will not be traffic onto Cherry Place.

Mayor McLean asked if anyone in the audience wished to speak on behalf of the request, there was none.

Mayor McLean asked if anyone in the audience wished to speak against the request, there was none.

Mayor McLean asked if any correspondence had been received, there was none.

Mayor McLean asked if there were questions from City Council, there was none.

Councilmember Bell reported that he is happy to see something happening on this property.

Mayor McLean closed the public hearing at 7:47 p.m.

City Attorney Margaret Brubaker explained that City Council will be taking action on two (2) items, the Zone Change request and the Vested Property Rights request. City Attorney Brubaker asked if Council was satisfied with the presentation covering both items.

Motion by Mayor Pro Tem Wallin, second by Councilmember Martinez to combine the public hearings for Items 6A(1) and 6A(2).

Voting aye: All present.

Motion by Mayor Pro Tem Wallin to approve the Ordinance the title of which as read by Mayor McLean, **second by Councilmember Baca**.

Voting aye: All present.

2. **A Resolution of the City Council of the City of Brighton, Colorado, Approving the Site Specific Development Plan Vested Property Right for the American Pride PUD (Planned Unit Development) for a Period of Three (3) Years, to Expire on October 7, 2017. The Approximately 1.4233 Acre Property is Generally Located North of Bromley Lane, South of Cherry Place, and Adjacent to the Fulton Avenue Alignment, and is Further Described as Lots 1 and 2, Block 1 of the American Pride Subdivision and being Located within the Southwest Quarter of Section 7, Township 1 South, Range 66 West of the 6th Principal Meridian, City of Brighton, County of Adams, State of Colorado.**

Mayor McLean read the title of the Resolution into the record.

Motion by Councilmember Martinez to approve Resolution 2014-91 the title of which as read by Mayor McLean, **second by Councilmember Humbert.**

Voting aye: All present.

B. Resolution of the City Council of the City of Brighton, Colorado, Approving the Organization of the Village at Southgate Metropolitan District Pursuant to the Statutory Requirements of Title 32, Article 1 of the Colorado Revised Statutes; Setting Forth Certain Findings in Relation Thereto; Authorizing the Mayor to Execute this Resolution on Behalf of the City and the City Clerk to Attest Thereto; and Approving an Intergovernmental Agreement, and Setting Forth Other Details Related Thereto.

Mayor McLean read the title of the Resolution into the record.

Mayor McLean opened the public hearing at 7:53 p.m. and City Clerk Natalie Hoel verified the required postings and publications (September 3, 2014 in the *Standard Blade*) for this public hearing were completed.

City Manager Esquibel introduced Assistant City Manager of Development Marv Falconburg.

Assistant City Manager of Development Marv Falconburg explained that this presentation is for the Village at Southgate Metropolitan District as required by the policies and regulations that City Council has adopted. The developer, Special Bond Counsel Sally Tasker and Internal Finance Advisor Bernadette Kimmey are present.

The location of the property is 120th Avenue between Peoria and Potomac streets on the south side. The applicant is Fred Cook on behalf of the owner PFG Acquisitions, LLC. The request is to consider a Metropolitan District of approximately 79.811 acres. The South Brighton Sub Area Plan is the controlling document for this area. This project was previously known as Fuller Estates and at the time of zoning it did comply with the South Brighton Sub Area Plan and was designated as Mixed Use Residential and Commercial. There is major water and sewer infrastructure that was installed by the City in this area when the Adams County Government Center was built. If this is approved the developer will be re-paying its proportionate share of the City's cost which is approximately 1.8 million dollars.

The Metropolitan District that was previously on this site was never fully formed and has lapsed. In 2006 the City Council did approve a Metro District and it was known as West 80 but it was not fully formed through the Court system. If this Metropolitan District Service Plan is approved this evening it will go to court prior to November 4, 2014. City Council also approved the PUD zoning for the Village at Southgate in the spring of 2014. An application for Final Plat and Development Agreement was submitted on July 15, 2014 and this is currently in process in Planning. This is the final step prior to construction; this is nearing completion and will be coming back to Council soon.

The proposed Metro District will assist in financing onsite and offsite regional infrastructure including a line item re-payment of \$1,780,538.00 for the regional water and sewer lines previously installed by the City. This also includes other infrastructure for a neighborhood as well as open space, landscaping, onsite and offsite road improvements and onsite utilities.

The Special District Procedures and Policies adopted by the City Council set forth the regulatory requirements that are required for a Service Plan to be submitted for City Council review. The Service Plan must also meet the requirements under the Colorado Revised Statutes.

The proposed Metro District Service Plan does meet the criteria as outlined in the State Statutes and also in the City's Special District Service Plan approval Procedures, with the provision that 80 acres

and a maximum of 50 mills is acceptable to the City Council. Those are the two (2) discretionary items in this Plan; the preferred acreage is 320 acres and the current cap is 38 mills. The previous Metro District Plan was also 80 acres. There was a previous approved Service Plan that showed 38 mills with a contemplation of the formation of a General Improvement District (GID) that would encompass the additional mills and also contemplates specifically in the approval language that if the GID was not issuing any debt within six (6) months the previous Metro District could go up to 50 mills. Staff recommends approval of the Metropolitan District. Assistant City Manager of Development Marv Falconburg introduced Special Counsel Sally Tasker.

Special Counsel Sally Tasker explained that she will be giving a brief overview of Special Districts, generally, and discuss the proposed Southgate Service Plan. Special Districts are political subdivisions of the State of Colorado and are governed by Statute. The purpose of forming a political subdivision or Special District is to provide financing for infrastructure and improvements that a city or county may not want to finance such as water, sewer and parks. A Special District has to be approved by the City in this case and a Service Plan has to be approved. A Service Plan sets forth the powers and limitations of the District. These are formed for a financing tool that the developer of the property is proposing, because if a Special District is formed, then tax exempt financing can be done. Tax exempt bonds could be issued and would have a lower interest rate so these improvements could be financed at a cheaper rate than traditional financing. It also allows the cost of the bonding to be passed on through property taxes of the owners in the District and allows fees and charges to be paid so that growth pays its own way. What is being asked for is a financing tool that is part of a bigger bucket of financing that the developer will bring to the project. The District is proposing 14 million dollars of improvements; the bonds will cover approximately 6 million dollars of that and there will be other tools to finance the remaining infrastructure. If this Service Plan is approved it will then go to the District Court for the approval of a petition, and the Court would then order an election.

Once formed, a Special District is similar to other governments where it will be subject to public bidding, open meetings, public budget laws, public audit laws and it must make filings with the local government. A government entity will be formed; they will have a board and elections and will be limited by Statute on what they can do, and these limitations are listed in the Service Plan. This is a common way to finance infrastructure and it is done throughout the state. The Special District is subject to TABOR and will have to have elections to issue bonds and raise taxes.

Councilmember Humbert asked where and when the board would meet and what the makeup of the board would be. Special Counsel Tasker explained that initially the board will be made up of the organizers of the District because the land is owned by one (1) entity. As residents and business owners move into the District and others are eligible to be on the board, there will be elections. This point has been looked at by the IRS and it was determined in Florida that if the entity is unable to hold elections and the developer is in control, the entity is not considered to be a political subdivision and therefore tax exempt debt cannot be issued. Councilmember Humbert asked how often the board would meet. Special Council Tasker reported that she does not know but there is a provision in the City's guidelines that they must meet in the City.

Councilmember Bell asked if a Metropolitan District is a method by which a community can issue bonds to develop property and Special Council Tasker answered "correct". Councilmember Bell clarified that the proposal is to form a Metropolitan District to issue bonds in the amount of 6 million dollars and the purpose is to develop infrastructure for Southgate development. Special Counsel Tasker agreed. Councilmember Bell asked who is ultimately responsible for paying those funds back. Special Counsel Tasker explained that the District is ultimately responsible, but the obligation will be set forth in the bond documents. The District will pledge certain revenues; it is expected that the District will pledge property taxes up to a certain limit on their mill levy and also assess facility fees for single-family homes and multi-family homes. Councilmember Bell asked if the property owners will pay those bond issues back and Special Counsel Tasker replied "yes". Councilmember Bell asked if this would ever default back to the City. Special Counsel Tasker explained that it is not a debt of

the City and is a good reason why Metro Districts are formed so they can issue the bonds for infrastructure and it does not affect the City's credit. Councilmember Bell asked that with the approval of this Metro District the City will receive money back from the infrastructure that was installed. Special Counsel Tasker explained that the City will receive a proportionate share of 1.78 million dollars for the water and sewer lines that were installed by the City in the area.

Councilmember Kreutzer asked who would vote on this issue when it is on the ballot. Special Counsel Tasker explained that it is the members of the District. Councilmember Kreutzer asked how many people that is and Special Counsel Tasker explained that at this time it would be a limited amount, but she is not sure of the exact number. Councilmember Kreutzer asked if there will be more people voting when there are more people that own property in the area. Special Counsel Tasker explained that once the District is formed it is final. The District is intending to hold an election to authorize debt and taxes that the District will then have the authority to do. It is fully expected that the election in November will authorize the issuance of the bonds. They will be issued in an amount more than the Service Plan is authorizing so if there is a need for more financing there will financial capability to do that. Once the ballot questions are approved, the bonds are approved and the taxes to pay that debt will be authorized, and the people who move into the development will move in subject to the electoral authorization. Councilmember Kreutzer asked if there will be a lot of campaigning and Special Counsel Tasker explained that there would not be.

Councilmember Kniss asked what the additional restrictions that were mentioned in the proposed plan might be. Special Counsel Tasker explained that the Special District is governed by Statute so there are certain things in the Statute that provide parameters. A lot of the parameters regarding debt and property taxes that can be imposed on a property owner are addressed in the Service Plan. In this Service Plan it states that only \$8,925,000.00 worth of bonds can be issued to finance these improvements and that total can go up to \$10,700,000.00 with the consent of the City Manager which allows a 20% contingency if the District is able to support more debt without having to come back before the City Council and amend the Service Plan. The debt is one limitation and the other limitation is the mill levy limitation. At this time under Colorado Statute if bonds are sold to a bank there is not necessarily a mill levy limitation on the bonds. In this instance if the debt is more than twice the assessed valuation of the property, the mill levy will have to be limited to fifty (50) mills for the debt service mill levy and the operational maintenance mill levy, so the homeowners are protected. When the assessed valuation goes up, under this Service Plan the District be able to go to an unlimited mill levy with the approval of the majority of the board members that live in the District. Those are the types of limitations that are imposed by Statute and therefore need to be addressed in the Service Plan. Other requirements in the Service Plan state that bonds cannot go more than thirty (30) years and interest cannot be more than 12%. The District has also agreed to enter into an Intergovernmental Agreement (IGA) with the City which will create a contract that will be entered into at their organizational meeting agreeing to comply with the limitations in the Service Plan. If for some reason the District does not comply with the requirements in the Service Plan, the City will have a contractual argument.

Special Counsel Tasker explained some of the specifics in the Service Plan. Initially the costs for the City-installed water and sewer would be reimbursed in the amount of 1.78 million dollars for the regional infrastructure including water lines, sewer lines, storm water, roads and parks. The total cost of improvements for all of this is approximately\$ 14,487,000.00. Bond proceeds are being looked at in the amount of \$8,925,000.00 which is the debt limit. There is a plan for two (2) series of bonds, one senior for \$ 6.2 million and another subordinate series for \$1,305,000.00 which will be expected to be bought by the developer if needed. The mill levy limit will start at 50 mills combined and if the debt is less than 50% of the assessed valuation then there could be an unlimited mill levy. This is one thing that is different from the proposed City Guidelines of 38 mills for debt service, and the reason this was in the Guidelines is because this area was expected to be in a GID and the GID was expected to finance the water and sewer infrastructure that the City installed. The City wanted to make sure that the combined mill levy with the GID would not go over 50 mills. There is not going to be a GID

issuing bonds to pay off the debt so there does seem to be a reason in this circumstance to not limit the 38 mills and to allow the combined fifty (50) mills. There is a thirty (30) year maximum. The repayment sources will be from taxes on the property, facility fees of \$2,500.00 for single-family and \$1,500.00 for multi-family. They will be limited obligations of the District.

Internal Financial Advisor Bernadette Kimmey explained that she reviewed the Service Plan and the Financing Plan submitted by the applicant. The developers will be responsible for the cost of any improvements that exceed the amount of debt issued by the District. The District may issue note certificates, debentures, or other debt and the District shall only issue bonds or other debt that conforms to the requirements and limitations of the Service Plan. In the financing document itself it projects the issuance of debt and the anticipated repayment schedule for the \$8,925,000.00. There was a cash flow analysis prepared by the bonds underwriting firm for both senior and subordinate debt in those amounts. It assumes a 2% increase in market value each year and it uses interest rates of 5.5% as a senior non-rated bond and it appears that the subordinate bonds are anticipated to be issued at 7.75% in the thirty (30) year bonds. The debt service reserve will be at 120% and would be covered from bond issuance proceeds on the senior bonds.

The applicant is proposing a seven (7) year build-out to start in 2015 and end in 2020. The payment will be from property taxes that are assessed and collected two (2) years after the improvements are constructed. The issuance of the general obligation bonds is estimated to be in 2019 and the amount of the \$7,620,000.00 (senior debt) and the \$6,305,000.00 (subordinate debt) in the same year with the maximum interest rate of 12%. On the senior bonds of the \$7,620,000.00 the applicant noted that the bond proceeds from that would be \$6.2 million dollars. The District may repay the organizer or organizer's successor or assigns for any unreimbursed costs of improvements and the District shall be prohibited from pledging or encumbering District or City access for repayment of any indebtedness. The District does not expect to impose a public improvement fee on retail sales unless the City consents. The Village at Southgate is currently located within the boundaries of the South Brighton General Improvement District (GID) and is also located within the boundaries of the 1989 IGA with Commerce City for property tax and sales and use tax sharing, including building use tax and auto use tax along 120th Avenue. The cost of the public improvements is estimated to be \$14,487,030.00 less the bond proceeds of 6.2 million dollars, with a resulting shortfall of almost 8.3 million dollars. The District must raise that almost \$15 million to construct public improvements in 2015. They plan on issuing bonds in 2019 to repay 6.2 million dollars of that and then issue note certificates, debentures or other debt in the amount of about 8.3 million dollars, plus interest. Based on the information provided by the applicant it appears that the new Village at Southgate Metro District will have the financial ability to discharge the proposed indebtedness of \$8,925,000.00.

Councilmember Baca asked if the public improvement fee (PIF) would be in addition to what is being proposed tonight. **Internal Financial Advisor Kimmey** explained that the PIF would require the City's consent to implement, and that it is not a piece of the Service Plan at this time. Councilmember Baca asked if this could be considered at a later time and Internal Financial Advisor Kimmey reported that it would have to come back to Council for approval.

Mayor McLean asked who the typical buyer of the bonds would be and Internal Financial Advisor Kimmey explained that it is proposed to issue in increments of \$500,000.00 to institutional investors.

Mayor McLean asked if the applicant would like to add anything to the presentation.

Brad Neiman, Miller & Associates, 1641 California Street, Suite 300, Denver, 80202. Mr. Neiman is representing the applicant and thanked City staff and the City Attorney's Office for their hard work and assistance getting this completed. Mr. Neiman noted that the notice of the hearing had been published but also had been mailed out to all interested parties within a three (3) mile radius per State Statute and these include any other Special Districts or municipalities that may be able to offer the services provided that the District is proposing. The Board will meet as often as needed, possibly

once or twice per year. As the District is a governmental entity it will need to meet at least on an annual basis to adopt the budget, approve audits and take care of any administrative matters. Each even numbered year there will be an election for board members. As development increases and residents move in there will be more board meetings. There are currently nine (9) eligible electors comprised of five (5) representatives of the organizer, the property owner and their respective spouses. This will increase as individuals move into the District. At this time, the District does not anticipate imposing a PIF, and placing a PIF on commercial property would require approval from City Council.

There are four (4) findings under CRS 32-1-203 that City Council must make in order to approve the Service Plan that has been presented. They are as follows:

1. There is sufficient existing and projected need for organized service in the area to be serviced by the proposed Special District.

Mr. Neiman explained that there is a need for public infrastructure; right now the area is entirely undeveloped and without the District to provide this as a finance mechanism, development would not occur.

2. The existing service in the area to be served by the proposed Special District is inadequate for present and projected needs.

Mr. Neiman explained that there is currently no public infrastructure within the boundaries of the District and there is a need.

3. The proposed Special District is capable of providing economical and sufficient service to the area within its proposed boundaries.

The Service Plan authorizes the District to provide the services and facilities that are needed for the development.

4. The area included within the proposed Special District has or will have the financial ability to discharge the proposed indebtedness on a reasonable basis.

The Service Plan and the Financing Plan evidence that the District can sufficiently service its debt with the imposition of the mill levy cap up to fifty (50) mills and that there is a means for the District to discharge its financial indebtedness as it becomes due on a reasonable basis.

Councilmember Humbert asked if this area was within an existing Urban Renewal Area and Mr. Neiman explained that it is not.

Councilmember Kreutzer asked what impact there will be on the taxes of the property owners buying in the area. Mr. Neiman explained that aside from any overlapping mill levy that the City imposes the only impact would be the mill levy that the District would impose up to the mill levy cap. Councilmember Kreutzer asked how much he would pay in taxes if he purchased a \$300,000.00 home in the District. **Internal Finance Advisor Kimmey** reported that a single-family home costing about \$325,000.00 with fifty (50) mills being proposed would result in \$1,293.00 per year and there is usually an addition of about ninety (90) mills when the County, the School District and other Districts are included. Councilmember Kreutzer asked how long this would be for and Internal Finance Advisor Kimmey reported that it would be for thirty (30) years.

Councilmember Martinez asked what the mill levy was in 2011 with the Adams Crossing Metro District. **Assistant City Manager of Development Marv Falconburg** reported that it was thirty-eight (38) mills with the provision for fifty (50), the same as this proposal. Councilmember Martinez asked if this is in the same realm as other Special Districts. Assistant City Manager of Development

Falconburg reported that he has a sampling of twenty (20) Metro Districts in Adams County. There are about seven (7) different existing and future developments in the City that are approved for Metro Districts and many of them have multiple Districts so there are approximately thirty-three (33) that are currently approved. Bromley Park Metro District has six (6) and is the only functioning District with residents in the City. It was approved through the County before the City of Brighton allowed or regulated Metro Districts so the City does not control this District. The other future Districts that are approved are Case Farms, Brighton Lakes 1-4, Adams Crossing 1-8, the previous at Southgate 1-4, and Prairie Center 1-10. These were all approved by previous Council's and have much stricter limitations. The average Adams County mill levy is fifty-three (53) and the maximum Adams County is eighty-six (86). The Bromley Park Metro No. 2 is currently at eighty-six (86) and with the overlap it is one hundred eighty-three (183) which is under the County approval of the Metro District. The City was very resistant to Metro Districts but found that this is a common practice and is the only way to get development to pay its own way. The City reluctantly allowed thirty-eight (38) mills but now the average is approximately fifty-three (53) in Adams County.

Councilmember Baca explained that she is excited to see development in this area and it will be a great addition to have commercial space on 120th Avenue. Councilmember Baca acknowledged the dedication of the developer for working so hard and even making significant changes to his own development to accommodate the residents in the neighboring development. Councilmember Baca expressed her dismay that this information was not brought to City Council at a Study Session considering the amount of information that has been given during this hearing. City Council wants to find a win, win situation for everyone but there was a lot of information and Councilmember Baca wished that it would have come back at another time. Councilmember Baca is disappointed that City Council was not given the opportunity to review this information prior to the hearing. Councilmember Baca explained that the preferred acreage for Metro Districts is 320 acres and this proposal is substantially lower than what Councilmember Baca would like, it should be a more substantial development if there is going to be this kind of financing.

Mayor McLean asked if anyone in the audience had questions for the applicant, there was none.

Mayor McLean asked if anyone in the audience wished to speak on behalf of the request, there was none.

Mayor McLean asked if anyone in the audience wished to speak against the request, there was none.

Mayor McLean asked if any correspondence had been received, there was none.

Mayor McLean asked if there were questions from City Council, there was none.

Mayor McLean closed the public hearing at 8:46 p.m.

Motion by Councilmember Bell to approve Resolution 2014-92 the title of which as read by Mayor McLean, **second by Councilmember Edwards**.

Voting aye: All present.

Mayor McLean asked for a break at 8:49 p.m.

Mayor McLean resumed the meeting at 9:02 p.m.

7. ORDINANCES FOR INITIAL CONSIDERATION

A. An Ordinance of the City Council of the City of Brighton, Colorado, Amending Article 2-8 Administration and Personnel of Chapter 2 of the Brighton Municipal Code Regarding

Changes to the City Manager's Administrative Plan for the City; Recognizing the New Positions of Assistant City Manager for Development and Redevelopment and Assistant City Manager for Operations; Defining the General Duties and Oversight Responsibilities Thereof; and Setting Forth Other Details Related Thereto.

Mayor McLean read the title of the Ordinance into the record.

City Manager Esquibel reported that the City Charter requires that the City Manager prepares an organizational structure of the City and present it to City Council periodically. For the past year the Director's team has been evaluating how the reorganization of the City should look and the changes that can be made to more effectively provide services to the City. Staff looked at what specifically should be taken into consideration while discussing the reorganization process and these are the nine (9) factors that were considered:

1. The organizational structure should address the City Council and citizens needs and priorities.
2. Maintain Communications.
 - Upward and downward communication process.
 - Be aware and address communication disconnects.
3. Prevent "Bottle Necking" in the organization.
4. Empowerment of directors and their position.
5. Succession planning and staff development.
6. Enhancement of a strategic and sustainable approach in providing City services.
7. Offer an understanding of each departmental function and the interaction that each provides to the organization.
8. Facilitate a process to encourage meeting efficiency among the departmental director team.
9. Organization must remain "fluid".

City Manager Esquibel presented the new organizational chart to City Council. City Manager Esquibel answered questions from Council regarding:

- If changes are made to this organizational chart in the future it being brought back to City Council.
- The timeframe for hiring the new Assistant City Manager.
- The person overseeing the operations departments until the new Assistant City Manager is hired.

Motion by Councilmember Kniss to approve the Ordinance the title of which as read by Mayor McLean, **second by Councilmember Kreutzer**.

Voting aye: All present.

8. ORDINANCES FOR FINAL CONSIDERATION

A. An Ordinance of the City of Brighton City Council Approving the Designation of the Former Senior Center (575 Bush Street) as a Local Historic Landmark; Setting Forth Certain Findings in Support of said Designation; Authorizing the Inclusion of the Property in the Brighton Register of Locally and Designated Historic Landmarks and Districts; Instructing the City Manager or his Designee to Notify the Owner of the Property of its Obligations and Restrictions associated with the Designation; and Setting Forth Other Details Related Thereto.

Mayor McLean read the title of the Ordinance into the record.

City Manager Esquibel introduced Long Range and Historic Preservation Planner Aja Tibbs.

Long Range and Historic Preservation Planner Aja Tibbs explained that this ordinance is for the historic landmark nomination for 575 Bush Street and this is the final reading of the Ordinance. The Historic Preservation Commission (HPC) reviewed the application according to the criteria in the Land Use Code. This was reviewed by the HPC at a public hearing on March 13, 2014 and was found to meet the criteria required and the HPC approved a Resolution recommending approval to the City Council for the designation. Staff also reviewed the application and found that the building meets the criteria set forth for the nomination. There are policies in the Comprehensive Plan supporting the preservation of historic structures. City Council reviewed this information at first reading of the Ordinance at a public hearing on April 15, 2014. There were several questions relating to the building and future use so City Council requested that this item be brought back for review at final reading.

There have been several questions about what “designation” means. Local designation makes the building eligible for state tax grants and tax credits and it preserves the structure through the Certificate of Appropriateness (COA). The COA process is kind of like a conditional use hearing. It requires a fifteen (15) day notice, the information is presented to the HPC and they review criteria to see if any additions or changes being proposed are appropriate according to the historic context of that structure. The building can be sold and there are no restrictions on keeping the building as a public or private use. The building may be renovated if the proposed changes meet the COA criteria. It is important to note that the COA process does not require the building to be restored or brought to an original condition; it just asks that the original structure remain in the context that it is in at this time. The building at 575 Bush Street has already been impacted, it has an addition on the side of the building, the water tower has been removed and the site has not been preserved. The interior has been modified dramatically since the original construction so the condition is now different and has been impaired. If the owner would like to do an addition to the building one could argue that this has already been done and should be allowable. The review is to make sure that the historic value of the structure is not being damaged more than it currently has. The regulations do allow for a designated structure to be relocated or demolished if evidence is provided that there are no other viable alternatives to keeping the structure or preserving it the way it is. The designation can be removed if the owners go through the same process and it is found that the designation is no longer appropriate.

Dave Jacovetta, 592 South 16th Avenue. Mr. Jacovetta expressed his disappointment that this item was supposed to be put off for six (6) months to explore where the funding would come from. There is still the issue of the amount of money that will be required to get this building back to working order.

Marty Wadsworth, 358 Arroyo Street, Brighton. Mr. Wadsworth expressed that the City should evaluate historic projects critically and is concerned about the number of historic buildings that the City already owns and the amount of money it will take to get this building open to the public.

Wayne Scott, 274 South 3rd Avenue. Mr. Scott explained that he feels this is the most important historic City building because it was built by the citizens of Brighton as the original Town Hall and it has served the City for many years. This designation was recommended by the HPC and they are experts in their field and in the history of Brighton.

Long Range and Historic Preservation Planner Aja Tibbs answered questions from Council regarding:

- The obligations or implications that this designation will have to be considered by any potential buyer.

Motion by Mayor McLean to postpone Item 8A for several months for staff to complete further research, **second by Councilmember Edwards.**

Voting aye: Mayor McLean, Councilmembers Bell, Edwards and Kniss.

Voting no: Mayor Pro Tem Wallin, Councilmembers Baca, Humbert, Kreutzer and Martinez.

Motion fails.

Motion by Councilmember Kreutzer to approve Ordinance 2177 the title of which as read by Mayor McLean, **second by Mayor Pro Tem Wallin.**

Voting aye: Mayor Pro Tem Wallin, Councilmembers Baca, Humbert, Kreutzer and Martinez.

Voting no: Mayor McLean, Councilmembers Bell, Edwards and Kniss.

Motion passes.

9. RESOLUTIONS

A. A Resolution Providing Funds for a 2014 Supplemental Budget Appropriation in the Amount of Eight Hundred Twenty Five Thousand and no/100 Dollars (\$825,000.00) for Tower Road and Southern Street Road Construction Project.

Mayor McLean read the title of the Resolution into the record.

City Manager Esquibel introduced Streets and Fleet Director Joe Smith.

Streets and Fleet Director Joe Smith explained that he will be discussing Items 9A and 9B together. The first Resolution is for a budget amendment and it is needed because of the changes in the project at Southern Street and Tower Road. The costs for the project were originally estimated in 2011. It was discussed at that time to do a ribbon of asphalt, 24' wide with no other improvements to make a road connection. There was only one lane built as part of Prairie Center Parkway south of Bromley Lane and it does not exist today. During the design process staff found several issues including a water line that needs to be moved. The original estimate was 1.4 million dollars for design and construction and a bid was received for just over 1.7 million dollars which is approximately 5% inflation since 2011. The ribbon of asphalt would have only required a minor amount of earthwork to complete the roadway but the new design will fit the future roadways for build out of Southern Street and Tower Road which will require more earthwork than originally anticipated.

Three (3) bids were received and they are all close in price. Included in the bids are the moving of the water line which is estimated at \$250,000.00, the lighting and the build out of the roadway to match the future roads, these additions make a difference of \$776,040.40. Staff is asking that the budget be increased by \$825,000.00 to allow for differences in the estimates to the actual cost. The budget amendment Resolution includes funds that are not General Funds; they are from specific roadway funds: the Adams County Road and Bridge Sales Tax Fund and the Traffic Impact Fees are both used specifically to build new roadways and for significant upgrades. If this project comes in under budget the extra money will go back to these funds for future roadways. Director Smith answered questions from Council regarding:

- The extra \$50,000.00 being added because the project cost is just an estimate.

Motion by Mayor Pro Tem Wallin to approve Resolution 2014-93 the title of which as read by Mayor McLean, **second by Councilmember Humbert.**

Voting aye: All present.

B. A Resolution of the City Council of the City of Brighton, Colorado, Accepting the Bid of Asphalt Specialties Company, Inc. and Awarding the Contract for the Tower Road and

Southern Street Road Construction Project, Bid #14-034, in an Amount not to Exceed One Million Seven Hundred Ten Thousand Four Hundred Thirty-Two and 40/100 Dollars (\$1,710,432.40), and Authorizing the Mayor to Sign the Contract on Behalf of the City and the City Clerk to Attest Thereto.

Mayor McLean read the title of the Resolution into the record.

Streets and Fleet Director Joe Smith asked for approval of a bid award to the lowest and most responsive and responsible bidder Asphalt Specialties Company. Staff received three (3) bids. Asphalt Specialties Company has done good work in the City in the past. There will be one (1) section of roadway between Southern Street and 45th Avenue that will be wider to accommodate a bike lane and a fence will have to be installed.

Motion by Councilmember Baca to approve Resolution 2014-94 the title of which as read by Mayor McLean, **second by Councilmember Edwards.**

Voting aye: All present.

C. A Resolution Providing Funds for a 2014 Supplemental Budget Appropriation in the Amount of Thirty Seven Thousand and no/100 Dollars (\$37,000.00) for the Design and Replacement of the South Steps and Landing at the Former Senior Center for the Purposes of Selling the Property.

Mayor McLean read the title of the Resolution into the record.

City Manager Esquibel introduced IT Director Margaret Brocklander.

IT Director Margaret Brocklander explained that this Resolution is for the engineering design services to replace the stairs and landing at the former Senior Center for the purpose of selling the property. A Senior Center Committee was formed and charged with looking at zoning and possible uses for the building. While the Committee is actively working on identifying options for possible uses it was found that the south steps and landing are deemed a hazard and it is necessary to repair the steps to get approval to use the 2nd floor of the building. The financial impact of this repair is \$70,000.00; there is currently \$33,000.00 available in the building and improvement account for the former Senior Center. This request is that an additional \$37,000.00 be appropriated to repair the steps. Repairs for the Senior Center were included in the proposed amendment of the 2014 budget presented on April 22, 2014 so the funds are available but need to be appropriated. Staff recommends approval of this budget appropriation.

Facilities Project Manager Bob Brady and City Manager Esquibel answered questions from Council regarding:

- There being something in place to keep people from using the stairway.
- The steps being repaired or replaced.
- The steps being condemned at this time.
- The condemnations being satisfied if the steps were completely removed.
- The building needing two (2) exits if it is not being used at this time.
- Protection to keep people from running under the steps.
- The efforts to find other uses for the building being abandoned.

Motion by Councilmember Kreutzer to approve Resolution 2014-95 the title of which as read by Mayor McLean, **second by Councilmember Humbert.**

Voting aye: All present.

Motion by Mayor Pro Tem Wallin, second by Councilmember Martinez to extend the meeting for fifteen (15) minutes at 11:00 p.m.

Voting aye: All present.

10. UTILITIES BUSINESS ITEMS

Ordinances

Resolutions

11. GENERAL BUSINESS

12. REPORTS

A. By the Mayor – Mayor McLean attended the E-470 Board Meeting, the Metro Mayors Caucus Conference, Weld County Mayors Meeting and the International Hispanic Network Program.

B. By Department Heads – Economic Development Director Robert Smith reported that Ross will be opening this Saturday.

C. By the City Attorney – No report.

D. By the City Manager – No report.

13. REPORTS BY COUNCIL ON BOARDS & COMMISSIONS

Councilmember Humbert reminded everyone that The Evening with Albin Wager will take place on Sunday at the Armory and tickets are available online.

Councilmember Baca asked if City Council would consider canceling the meeting on November 4, 2014 since it is election night.

City Manager Esquibel explained that there will be a Special City Council meeting scheduled for November 25, 2014 prior to the Study Session.

Motion by Councilmember Baca, second by Mayor Pro Tem Wallin to cancel the City Council meeting on November 4, 2014

Voting aye: All present.

Mayor Pro Tem Wallin attended the annual Police Department inspection and is proud of the Police Department.

Councilmember Edwards attended the Taste of Brighton at the Eagle View Adult Center and it was a great event. The Predator Aware Fair had a fair turnout but had a lot of great information for parents with young children.

Councilmember Martinez was impressed with the vendors at the Predator Aware Fair and thanked them all for the event. The IHN speaker Federico Pena was wonderful and it was a great event.

Councilmember Kreutzer attended the Lodging Tax Committee meeting. Councilmember Kreutzer thanked Chief of Police Clint Blackhurst for all of the work putting on the Homecoming Parade. It is a great event for the community. There were many good questions from citizens at the Coffee with

Mayor McLean. Councilmember Kreutzer toured the North Metro Wastewater Facility. Saturday is the Historic Preservation Annual Gala, 50's Rock around the Clock.

Councilmember Kniss thanked the Kiwanis for the Predator Aware Fair and encourages everyone to go to the Police Department and get a packet on identity theft. Councilmember Kniss did a ride-along with police officers and appreciates how community centered the Brighton officers are and how respectful they are with the people they come in contact with. Councilmember Kniss attended the swearing in ceremony for the new officers and thanked City Manager Esquibel for hosting the IHN conference. There were two (2) Brighton High School graduates on the panel. Brighton hosted the delegation of Brazilian educators and it was a great event.

Mayor McLean will be walking with children to Pennock Elementary in the morning for Walk to School Day.

14. EXECUTIVE SESSION

15. ADJOURNMENT

Motion by Councilmember Martinez, second by Mayor Pro Tem Wallin to adjourn at 11:15 p.m.

Voting aye: All present.

CITY OF BRIGHTON, COLORADO

By: _____
Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

Approval Date



Staff Report

File #: ID-250-14, **Version:** 1

Department of City Clerk

Reference: Swear in Youth Commission and Youth Corps of Volunteers Members

To: Mayor Richard N. McLean and Members of City Council

Through: Manuel Esquibel, City Manager

Prepared By: Natalie Hoel, City Clerk

Date Prepared: November 7, 2014



Staff Report

File #: ID-264-14, **Version:** 1

Department of City Clerk

Reference: American Diabetes Month Proclamation

To: Mayor Richard N. McLean and Members of City Council

Through: Manuel Esquibel, City Manager

Prepared By: Natalie Hoel, City Clerk

Date Prepared: November 13, 2014



Proclamation

American Diabetes Month

WHEREAS, today, nearly 30 million Americans have diabetes.

WHEREAS, this devastating disease affects men and women of all backgrounds and ages, and can cause serious health complications, including blindness, kidney failure, heart disease, stroke and the loss of lower limbs;

WHEREAS, most commonly diagnosed in young people, type 1 diabetes has no known method of prevention. However, it can be managed with regular exercise, good nutrition, and proper medication;

WHEREAS, another 86 million Americans have pre-diabetes and are at risk for developing type 2 diabetes;

WHEREAS, people with diabetes are nearly twice as likely to be hospitalized for a heart attack or stroke;

WHEREAS, the American Diabetes Association estimates that the total national cost of diagnosed diabetes in the United States is \$245 billion;

WHEREAS, one in five health care dollars is spent caring for people with diabetes;

WHEREAS, American Diabetes Month takes place each November and is a time to come together as a community to stop diabetes;

WHEREAS, during National Diabetes Month, we stand with all those battling this chronic, life-threatening disease and their families, and we pay tribute to the advocates, researchers, and health care professionals who are committed to supporting healthy lifestyles in communities across our country;

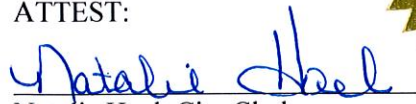
NOW, THEREFORE BE IT RESOLVED that I, Richard N. McLean, Mayor of the City of Brighton, on behalf of the City Council, do hereby proclaim November as "American Diabetes Month." We hereby commit to supporting healthy lifestyles in Brighton in support of those with diabetes.


DATED this 18th day of November, 2014

CITY OF BRIGHTON



ATTEST:


Natalie Hoel, City Clerk


Richard N. McLean, Mayor
Kirby Wallin, Mayor Pro-Tem
Lynn Baca
Rex Bell
J.W. Edwards
Mark Humbert
Joan Kniss
Ken Kreutzer
Cynthia Martinez



Staff Report

File #: ID-265-14, **Version:** 1

Department of City Clerk

Reference: Shop Small in Brighton Day Proclamation

To: Mayor Richard N. McLean and Members of City Council

Through: Manuel Esquibel, City Manager

Prepared By: Natalie Hoel, City Clerk

Date Prepared: November 13, 2014



Proclamation

Shop Small in Brighton Day

November 29, 2014

WHEREAS, small business is recognized as the backbone of a community; and

WHEREAS, there are scores of small businesses in Brighton, including more than 100 on Main and Bridge Streets alone in Historic Downtown Brighton and dozens more throughout the City; and

WHEREAS, owner-operated business, such as those throughout Brighton, provide a more personal shopping experience; and

WHEREAS, local businesses also frequently offer items that can be unique to that specific City; and

WHEREAS, big-box stores often benefit from post-Thanksgiving Black Friday sales; and

WHEREAS, recently the Saturday after Thanksgiving has been deemed Shop Small Saturday, in deference small businesses across the nation.

NOW, THEREFORE, I, Richard N. McLean, Mayor of the City of Brighton, on behalf of City Council, do hereby proclaim Saturday, November 29, 2014, as Shop Small in Brighton Day.

Dated this 18th day of November, 2014

City of Brighton

Richard N. McLean, Mayor
Kirby Wallin, Mayor Pro-Tem
Lynn Baca
Rex Bell
J.W. Edwards
Mark Humbert
Joan Kniss
Ken Kreutzer
Cynthia A. Martinez

ATTEST:

Natalie Hoel, City Clerk



Staff Report

File #: ID-251-14, **Version:** 1

Department of Human Resources

Reference: Introduction of New Employees

To: Mayor Richard N. McLean and Members of City Council

Through: Manuel Esquibel, City Manager

Prepared By: Natalie Hoel, City Clerk

Date Prepared: November 7, 2014



Staff Report

File #: ID-242-14, **Version:** 1

Department of Community Development

Reference: Electronic Cigarettes and Vaporizers

To: Mayor Richard N. McLean and Members of City Council

Through: Manuel Esquibel, City Manager
Marv Falconburg, Assistant City Manager, AICP
Holly Prather, Community Development Director, AICP
Jason Bradford, Planning Manager, AICP

Prepared By: Aja Tibbs, Long Range and Historic Preservation Planner

Date Prepared: October 31, 2014

PURPOSE

To first amend article 8-44 of the *Municipal Code* in order to include electronic cigarettes and vaporizers into the existing smoking prohibited regulations. Secondly, to amend the *Land Use and Development Code* in order to adopt a definition of "tobacco sales," which will reference the amendment of the *Brighton Municipal Code*.

BACKGROUND

Electronic cigarettes are a new use which has grown in popularity over the last year. Because it is a new use, there is nothing in the current land use code to address how it will be regulated. In the interim, staff has interpreted the use to be similar to tobacco sales. However, the code should be revised to specifically address the use of electronic cigarettes in public places.

Electronic cigarettes are devices that simulate the act of smoking by vaporizing a liquid that is then inhaled. Examples of electronic vaporizers include, but are not limited to, electronic cigarettes, electronic cigars, and personal vaporizers. The liquid cartridges may contain a variety of contents. There are liquids which contain nicotine or THC (chemical compound found in marijuana), but also liquids without either one (just flavored).

The Centers for Disease Control (CDC) recently reported significant increases in calls to poison centers related to e-cigarettes and the U.S. Federal Drug Administration (FDA) has begun the process of writing new regulations governing the fast-growing e-cigarette industry. These new rules are expected to regulate e-cigarettes as tobacco products, placing them under the same requirements as cigarettes. The director of the FDA's Center for Tobacco Products was recently quoted as saying, "*When finalized [the proposed regulations] would result in significant public health benefits, including through reducing sales to youth, helping to correct consumer misperceptions, preventing misleading health claims and preventing new products from entering the market without scientific review by FDA.*"

Other municipalities in the area are following suit. Lakewood and Fort Collins have both adapted regulations to incorporate electronic cigarettes into their existing smoking and tobacco regulations. Communities such as Louisville, Golden, and Commerce City are reportedly doing the same. Reasons provided for the restrictions include, but are not limited to, the following:

- 1) The use of electronic cigarettes mimics or copies the act of traditional tobacco cigarettes, and their use in the public should be prohibited to eliminate confusion or misconceptions to the general public.
- 2) The use and practice of electronic cigarettes in the public creates the appearance of a social norm and influences the potential increase in smoking habits in minors and future generations. Such practice reverses the intentional progress made with the Colorado Clean Air Act and its general prohibition of tobacco use in areas of possible secondhand exposure.
- 3) Vapor released into the air from the user can contain nicotine, lead, nickel, and chromium, and no research or evidence exists to indicate the harm these toxins may cause to nearby persons.
- 4) The FDA does not yet regulate these materials, so their levels of toxicity and the danger they pose to the user and surrounding persons is still unknown. Restricting any negative effects to non-users is protecting the health, safety, and welfare of the community. *Note: The FDA rule-making process will take some time to complete. When those regulations are finally adopted, staff will review them and make recommendations for additional changes to the code, if warranted.*

Certain code amendments would need to be made in order to enact regulations which would regulate electronic cigarettes in the same manner as smoking in public. The first code amendment proposed is to *Article 8-44. Smoking Prohibited* of the *Municipal Code* to address electronic cigarettes. Currently, Article 8-44 prohibits smoking in any building or indoor area except the following:

- 1) Private dwelling that is not used for a public business (such as a daycare or healthcare facility);
- 2) A place of employment with three or fewer employees who have consented to the smoking;
- 3) Up to 25% of designated hotel guestrooms;
- 4) The outdoor area of any business (subject to perimeter provisions);
- 5) A private non-residential farm (further defined in regulations);
- 6) A pre-existing tobacco store or cigar bar that meets non-conforming regulations.

Article 8-44 also includes definitions of “smoke or smoking” and “tobacco” to clarify what applies to the regulations. The drafted amendment modifies the current regulations to include the use of electronic vaporizers and their related products in the same manner.

Secondarily, an amendment has been proposed for the definitions section of the *Land Use and Development Code* to address the use of “tobacco sales.” The new definition would be added to reference the previously described *Municipal Code* amendment to Article 8-44. Said definition would clarify that electronic cigarettes and their associated materials and products could be sold as a primary use in the same zone districts which currently permit tobacco sales uses. Currently, “tobacco sales” are an allowed use in the General Retail and Sales Services (C-3) zone district, and are a conditional use in the Restricted Retail and Services (C-2), Downtown (DT), Mixed Use Neighborhood Center (MUNC) and the Mixed Use Commercial Center (MUCC) zone districts, which requires approval by the City Council. The proposed reference in the land use code would be written as follows:

Tobacco Sales: shall be as defined in Section 8-44-20 of the Brighton Municipal Code, as the same may be amended from time to time.

Instead of adding a unique definition to this section in the *Land Use and Development Code*, the reference to the definition in the *Municipal Code*, will ensure consistency between both sections of Brighton’s code.

PUBLIC COMMENT

Public notice of the City Council public hearing was published in the *Brighton Banner* for not less than 15 days before the City Council meeting (published October 30, 2014). No public comment has been received as of this day, November 12, 2014.

PLANNING COMMISSION

The Planning Commission held a public hearing regarding the proposed *Land Use and Development Code* amendment on October 14th. At said meeting, the commission reviewed the draft proposal and continued their recommendation to November 10th, in order to additionally consider the proposed amendment. At the November 10th meeting the Commission voted to make a recommendation to the City Council for denial of the proposed *Land Use and Development Code* amendment. A copy of the Resolution which provides their recommendation and justification for denial has been attached for review. Amendments to the *Municipal Code* do not appear before the Planning Commission, so their recommendation is exclusively drafted in response to the *Land Use and Development Code* amendment.

STAFF RECOMMENDATION

Staff is recommending approval of the proposed code amendments with input/revisions from the City Council and public.

OPTIONS FOR COUNCIL CONSIDERATION

- Approve the code amendment as drafted; or
- Approve the code amendment with specific revisions and changes; or
- Deny the code amendment.

ATTACHMENTS

- Ordinance (Draft) with Exhibits
- Planning Commission Resolution

ORDINANCE NO. _____

INTRODUCED BY: _____

AN ORDINANCE OF THE CITY COUNCIL AMENDING THE BRIGHTON **MUNICIPAL CODE** CHAPTER 8. **HEALTH AND SAFETY**, AMENDING ARTICLE 8-44, **SMOKING PROHIBITED**; TO INCORPORATE THE USE OF ELECTRONIC CIGARETTES, AND CHAPTER 17. **LAND USE AND DEVELOPMENT CODE**, AMENDING ARTICLE 17-12. **DEFINITIONS**; TO ADD A NEW DEFINITION REFERENCING THE MUNICIPAL CODE; AND SETTING FORTH DETAILS IN RELATION TO THE FOREGOING.

WHEREAS, from time to time the Land Use and Development Code must be updated for the sake of efficiency and ease of use, in order to relate to present and future land uses; and

WHEREAS, the adoption of this ordinance complies with and shall facilitate the implementation of the Comprehensive Plan 2020;

WHEREAS, a notice of the public hearing was published in the *Brighton Banner*, a legal newspaper of general circulation in the City of Brighton, on October 30, 2014; and

WHEREAS, the Planning Commission of the City of Brighton reviewed the proposed amendment to the *Land Use and Development Code* and recommended denial of the same by the City Council at the conclusion of a continued meeting held on November 10, 2014;

WHEREAS, the City Council finds that the current use of electronic devices, in order to take in nicotine or other products, should be similarly restricted to tobacco use in order to prevent confusion, to discourage use with minors, and prevent any negative secondhand impacts to surrounding persons; and

WHEREAS, the City Council finds that it is in the interest of the public health, safety and welfare to adopt the Municipal Code amendments set forth herein.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AS FOLLOWS:

Section 1. **Article 8-44-20 Definitions** of **Chapter 8** of the Brighton Municipal Code is hereby amended to read as follows:

(A) Article 8-44-20, **Definitions**, is hereby amended in its entirety to read as follows:

The following terms used in this Article have the following meanings unless the context clearly indicates otherwise:

Building means any structure enclosed for protection from the weather, whether or not windows or doors are open. The opening of windows or doors, or the temporary removal of wall panels, does not convert a building into an outdoor area.

Cigar-tobacco bar means a bar that, in the calendar year ending December 31, 2005, generated at least five percent (5%) or more of its total annual gross income or fifty thousand

dollars (\$50,000.00) in annual sales from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending machines. In any calendar year after December 31, 2005, a bar that fails to generate at least five percent (5%) of its total annual gross income or fifty thousand dollars (\$50,000.00) in annual sales from the on-site sale of tobacco products and the rental of on-site humidors shall not be defined as a *cigar-tobacco bar* and shall not thereafter be included in the definition regardless of sales figures.

Electronic smoking device means an electronic and/or battery operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine, marijuana, or other substances. "Electronic Smoking Device" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, and electronic cigar, an electronic cigarillo, and electronic pipe, an electronic hookah, or any other product name or description. "Electronic Smoking Device" does not include any product specifically approved by the United States Food and Drug Administration for use in the mitigation, treatment, or prevention of disease.

Electronic smoking device paraphernalia means cartridges, cartomizers, e-liquid, smoke juice, tips, atomizers, electronic smoking device batteries and/or chargers, and any other item specifically designed for the preparation, charging, or use of Electronic Smoking Devices.

Employee includes every person who performs any type of work for the benefit of another in consideration of direct or indirect wages or profit; regardless of whether such person is referred to as an employee, contractor, independent contractor or volunteer or by any other designation or title; or provides uncompensated work or services to a business or nonprofit entity.

Employer means any person, partnership, association, corporation or nonprofit entity that employs one (1) or more persons.

Entryway means the doorway leading into a building or facility that is not exempted from the terms of this Article. *Entryway* also includes the area of public or private property within a specified radius outside of the doorway.

Environmental tobacco smoke or vapor or secondhand smoke or vapor means the complex mixture formed from the escaping smoke of a burning tobacco, marijuana or other product which is being smoked or a vapor from an electronic smoking device. Also known as *sidestream smoke or vapor* and exhaled by the smoker or user of an electronic smoking device.

Indoor area means any enclosed area or portion thereof. The opening of windows or doors, or the temporary removal of wall panels, does not convert an indoor area into an outdoor area.

Place of employment shall mean any area under the control of a public or private employer that employees normally frequent or use during the course of employment, including but not limited to work areas, employee lounges, restrooms, conference and classrooms, employee cafeterias, hallways, stairways, enclosed parking and storage. *Place of employment* shall not include a private residence unless the residence is used as a child care, adult day care or health care facility.

Private dwelling means any place used primarily for sleeping overnight and conducting activities of daily living, including, without limitation, private residences, hotel or motel rooms or suites; and a hospital, hospice or nursing home room, but not the lobby, common elevator, common hallway or stairway, public restrooms or other common areas of a hotel, motel, hospital, hospice or nursing home.

Public conveyance means any motor vehicle or other means of conveyance licensed by the Public Utilities Commission of the State for the transportation of passengers for hire, and includes without limitation buses, taxicabs, limousine services and airport passenger services.

Public outdoor places means any outdoor facility or area that is open to members of the public who enter such area or place, including but not limited to sports fields, sports venues, restrooms, outdoor seating areas for participants and/or observers, recreational facilities and the designated area surrounding such places and areas.

Service line shall mean any indoor or outdoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money. *Service line* does not include lines in which one (1) or more persons are enclosed in a private vehicle while waiting in line.

Smoke or smoking means:

a. The lighting or activation of any cigarette, cigar, pipe, hookah, bong, shabong, electronic smoking device, or other device of whatever nature intended for or being used for smoking or inhaling nicotine, marijuana or other vapor, or the possession of any lighted cigarette, cigar, pipe, hookah, bong, shabong, or other device of whatever nature intended for or being used for smoking, regardless of the composition of the lighted material, or contents within an activated electronic smoking device;

b. Carrying or placing of a lighted cigarette, cigar, pipe, bong, shabong, chillum or tube from a lighted hookah or any other lighted smoking object, or electronic smoking device in one's mouth for the purpose of inhaling or exhaling smoke or vapors from the electronic smoking device;

c. Placing of a lighted cigarette, cigar, pipe, bong, shabong, chillum, electronic smoking device or any other similar object or equipment in an ashtray or other receptacle and allowing smoke or vapor to diffuse in the air;

d. Carrying or placing of a lighted cigarette, cigar, pipe, bong, shabong, chillum, activated electronic smoking device or any other object, material or equipment in one's hands or any appendage or device and allowing smoke or vapor therefrom to diffuse in the air; or

e. Inhaling or exhaling smoke from a lighted cigarette, cigar, pipe, hookah, bong, shabong or any other device, object or material of whatever nature intended for or being used for smoking or any other lighted smoking material or equipment.

f. Inhaling or exhaling vapors from an electronic smoking device of whatever nature, intended for or being used for inhaling a vapor from the electronic smoking device.

Smoke-free work area means an indoor area in a place of employment where smoking is prohibited under this Article.

Sports venues means any outdoor parks, facilities and athletic fields designed and improved for use for a specific sport or recreational activity which by illustration includes skate parks, tennis courts, soccer fields, ball fields; swimming and aquatic pools and facilities; and other similar places or venues where members of the general public assemble either to engage in the physical or recreational activity, participate in athletic competition or witness the activities or sports events.

Tobacco includes cigarettes, cigars, cheroots, stogies, any periques; granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco; snuff and snuff flour; Cavendish; plug and twist tobacco; fine-cut and other chewing tobacco; shorts, refuse craps, clippings, cuttings and sweeping of tobacco; marijuana and other kinds and forms of tobacco and/or marijuana, prepared in such a manner as to be suitable for chewing or for smoking in a cigarette, pipe, hookah, bong, shabong, chillum or other device of whatever nature intended for or being used for smoking or otherwise, or both for chewing and smoking. *Tobacco* also includes cloves and any other plant matter or product that is packaged for smoking.

Tobacco store or sales means a retail business open to the public if more than eighty-five percent (85%) of its gross revenue from that location is from the retail sale of cigarettes, tobacco products, electronic smoking devices or electronic smoking device paraphernalia or products related to the use of cigarettes, tobacco products, electronic smoking devices and electronic smoking device paraphernalia.

Work area means an area in a place of employment where one (1) or more employees are routinely assigned and perform services for or on behalf of their employer.

Section 2. **Article 17-12-20 Definitions of Chapter 17** of the Brighton Municipal Code is hereby amended with the addition of the following definition:

(A) Article 17-12-20, **DEFINITIONS**, is hereby amended with the addition of a definition to read as follows:

Tobacco Sales: shall be as defined in Section 8-44-20 of the Brighton Municipal Code, as the same may be amended from time to time.

Section 5. **Purpose.** The purpose of this Ordinance is to provide for the health, safety and welfare of the people.

Section 6. **Repeal.** Existing or parts of ordinances covering the same matters as embraced in this Ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed, except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in

violation of any ordinance hereby repealed prior to the taking effect of this Ordinance

Section 7. Validity. If any part or parts of this Ordinance are for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each part or parts thereof, irrespective of the fact that any one part or parts be declared invalid.

Section 8. Interpretation. This Ordinance shall be so interpreted and construed as to effectuate its general purpose.

Section 9. Certification. The City Clerk shall certify to the passage of this ordinance and make not less than three copies of the adopted Land Use and Development Code available for inspection by the public during regular business hours.

**INTRODUCED, PASSED ON FIRST READING AND ORDERED PUBLISHED THIS
18th DAY OF NOVEMBER, 2014.**

CITY OF BRIGHTON, COLORADO

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Margaret R. Brubaker, City Attorney

Published in the *Brighton Blade*
First Publication: November 26, 2014

PASSED ON SECOND AND FINAL READING AND ORDERED PUBLISHED BY TITLE
ONLY THIS _____ DAY OF _____, 20____.

CITY OF BRIGHTON, COLORADO

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

Published in the *Brighton Blade*

Final Publication: _____

PLANNING COMMISSION RESOLUTION

A RESOLUTION OF THE CITY OF BRIGHTON PLANNING COMMISSION, RECOMMENDING DENIAL OF A PROPOSED AMENDMENT TO THE CITY OF BRIGHTON MUNICIPAL CODE, CHAPTER 17, LAND USE AND DEVELOPMENT CODE, SECTION 17-12-20, DEFINITIONS.

RESOLUTION NO.: 14-08

WHEREAS, from time to time it is proposed that the City of Brighton *Municipal Code* should be revised in the area of land use regulation; and

WHEREAS, pursuant to the City of Brighton Charter, a notice of public hearing was published in the *Brighton Banner*, a legal newspaper of general circulation in the City of Brighton, on Thursday, September 25, 2014; and

WHEREAS, the Planning Commission held a public hearing on October 14, 2014, which was continued and then completed on November 10, 2014; and

WHEREAS, the purpose of the hearing was to consider all relevant evidence and testimony from City Staff and other Interested Parties, including the public at large, regarding a proposed amendment to the *Municipal Code*, Chapter 17, Land Use and Development Code, more particularly described in Exhibit A; and

WHEREAS, the Planning Commission reviewed the proposed amendment and finds it to be unnecessary; specifically, the Planning Commission found insufficient information to determine whether electronic vaporizers cause adverse health impacts, and whether electronic vaporizers should be further regulated by an amendment to the City's Land Use Code; and

WHEREAS, in addition, the Planning Commission finds that existing regulations adopted by the State of Colorado are or should be sufficient regulation, until additional information is released by the United States Federal Drug Administration.

NOW THEREFORE, be it resolved that the City of Brighton Planning Commission does hereby recommend to the City Council denial of the proposed amendment to the City of Brighton *Municipal Code*, Chapter 17, Land Use and Development Code, set forth in Exhibit A.

RESOLVED, this 10th day of November, 2014.

ATTEST:

**CITY OF BRIGHTON, COLORADO
PLANNING COMMISSION**


Diane Phin, Secretary


Dick Hodge, Chairperson

EXHIBIT A

Section 17-12-20 Definitions

Tobacco Sales: shall be as defined in Section 8-44-20 of the Brighton Municipal Code, as the same may be amended from time to time.



Staff Report

File #: ID-261-14, **Version:** 1

Department of Municipal Court

Reference: Amend Municipal Code 1-24-10 to increase the maximum possible fine which may be imposed

To: Mayor Richard N. McLean and Members of City Council

Through: Manuel Esquibel, City Manager

Prepared By: Michelle Ramos, Court Administrator

Date Prepared: November 5, 2014

PURPOSE: To Amend by Ordinance the Brighton Municipal Code Section 1-24-10, the maximum fine which may be imposed

BACKGROUND: Section 1-24-10 of the Brighton Municipal Code currently authorizes the municipal court to impose a maximum fine of up to \$1000 for a violation of any ordinance designated as liable to be punished by general penalty per the Brighton Municipal Code.

The Colorado State Legislature adopted C.R.S. §13-10-113 in 2013 which increased the maximum fine which may be imposed to two thousand six hundred fifty dollars (\$2,650). It was also stated that the maximum fine would be subject to an annual review to determine if the fine amount could be increased by an increase in the cost of living.

The judge of the municipal court shall not exceed the maximum as it is outlined by ordinance. However, the judge would have the authority to suspend all or a portion of a sentence and grant probation for up to one year if it is determined to be an appropriate sanction for the violation in the interest of public health, safety and welfare.

FINANCIAL IMPACT

N/A

OPTIONS FOR COUNCIL CONSIDERATION

- 1) Approve
- 2) Not approve

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AMENDING THE BRIGHTON MUNICIPAL CODE SECTION 1-24-10 TO INCREASE THE FINES WHICH MAY BE IMPOSED BY THE MUNICIPAL COURT TO TWO THOUSAND SIX HUNDRED FIFTY DOLLARS (\$2,650); PROVIDING THAT HEREAFTER ANNUAL INCREASES OF THE MAXIMUM FINE TO BE DETERMINED BY THE INCREASE IN THE COST OF LIVING; GRANTING AUTHORITY TO SUSPEND ALL OR A PORTION OF THE SENTENCE AND GRANT PROBATION, ALL AS AUTHORIZED BY C.R.S. §13-10-113; AND SETTING FORTH DETAILS IN RELATION THERETO.

ORDINANCE NO. _____

INTRODUCED BY: _____

WHEREAS, in 2013 the Colorado General Assembly adopted C.R.S. §13-10-113 which increased the maximum fine which may be imposed by Municipal Court to two thousand six hundred fifty dollars (\$2,650) from the prior one thousand dollars (\$1,000), authorized annual increases in the maximum fine determined by the increase in the cost of living, and authorizing the suspension of sentence and granting probation; and

WHEREAS, Section 1-24-10. Designated of Article 1-24. General Penalty of the Brighton Municipal Code limits the amount of fine which may be imposed by the Municipal Court to one thousand dollars (\$1,000); and

WHEREAS, the City Council finds that increasing the permissible fine limit for the Municipal Court as specified by State statute, the provisions for annual increases in the fine limit, and authority for the Municipal Court to suspended sentences and grant probation are in the interest of the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AS FOLLOWS:

Section 1. Section 1-24-10. Designated of the Brighton Municipal Code, Article 1-24. General Penalty is hereby repealed and reenacted to read as follows:

Sec. 1-24-10. Designated.

(A) Any person convicted of violating any ordinance section or Code section may be incarcerated for a period not to exceed one (1) year or fined an amount not to exceed ~~one thousand dollars (\$1,000.00)~~ **two thousand six hundred fifty dollars (\$2,650)**, or both (notwithstanding any lower maximums or limitations upon sentences that may be contained in any existing ordinance or Code section of the City and any such previous limitations are hereby rescinded and nullified), including convictions for violation of traffic offenses under the Model Traffic Code adopted by ordinance; except, in nontraffic cases any person who has not become eighteen (18) years of age as of the date of the violation shall not be subject to incarceration unless such incarceration is for failure to comply with a lawful order of the Court or for contempt of Court. The Court may also order convicted defendants to pay restitution to any victim or to the City for any amount of damages or expenses related to the violation.

- (B) *The limitation on municipal court fines set forth in paragraph (A) of this Section 1-24-10 shall be adjusted for inflation on January 1 of each year hereafter. As used in this paragraph (B), "inflation" means the annual percentage change in the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Denver-Boulder, All Items, All Urban Consumers, or its successor index.*
- (C) *In sentencing or fining a violator, the municipal judge shall not exceed the sentence or fine limitations established in this section. Any other provision of the law to the contrary notwithstanding, the municipal judge may suspend the sentence or fine of any violator and place the violator on probation for a period not to exceed one year.*

Section 2. **Purpose.** The purpose of this Ordinance is to provide for the health, safety and welfare of the people.

Section 3. **Repeal.** Existing or parts of ordinances covering the same matters as embraced in this Ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed, except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this Ordinance

Section 4. **Validity.** If any part or parts of this Ordinance are for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each part or parts thereof, irrespective of the fact that any one part or parts be declared invalid.

Section 5. **Interpretation.** This Ordinance shall be so interpreted and construed as to effectuate its general purpose.

INTRODUCED, PASSED ON FIRST READING AND ORDERED PUBLISHED THIS 18th DAY OF November, 2014.

CITY OF BRIGHTON, COLORADO

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Margaret R. Brubaker, City Attorney

Published in the *Standard Blade*
First Publication: November 26, 2014

PASSED ON SECOND AND FINAL READING AND ORDERED PUBLISHED BY
TITLE ONLY THIS _____ DAY OF _____, 2014.

CITY OF BRIGHTON, COLORADO

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

Published in the *Standard Blade*
Final Publication: _____



Staff Report

File #: ID-262-14, **Version:** 1

Department of Police and Code Enforcement

Reference: Application for the amendment of costs associated with Code Enforcement

To: Mayor Richard N. McLean and Members of City Council

Through: Manuel Esquibel, City Manager

Prepared By: Micah Acker, Support Services Sergeant
Scott Wegscheider, Lieutenant

Date Prepared: November 3, 2014

PURPOSE:

To inform City Council and obtain approval to amend the Brighton Municipal Code relating to the recovery of City's costs of Code Enforcement as set forth in subsections 8-8-801(1) and (2), weed abatement; 8-8-220(1) and (2), trees and plants; 8-16-85, litter and trash; and 8-24-1601(1) and (2), and nuisance

BACKGROUND:

The ordinance provisions related to the administrative costs incurred by the City when property owners and/or lessees fail to comply with City notices have not been updated since 1999. The costs should reflect a reasonable amount incurred by the City in such actions.

CRITERIA BY WHICH COUNCIL MUST CONSIDER THE ITEM : Adjusting for inflation from 1999, (\$25/25%) actual costs of \$100 or less will now incur \$35 additional costs. For actual costs greater than \$100 will now be billed 35% in additional costs.

FINANCIAL IMPACT:

The proposed amended amounts to the ordinances would not have a financial impact on the City.

STAFF RECOMMENDATION:

Section 1. Sections

8-8-80. Failure to remove; abatement by City; costs (weeds, brush, rubbish and junk);

8-8-220. Abatement by City; costs; (trees and plants);

8-16-85. Failure to remove; abatement by City (litter and obstructions); and

8-24-160. City to perform work; costs (nuisances)

are hereby repealed and reenacted to read as follows:

Section 8-8-80. Failure to remove; abatement by City; costs

(1) Actual costs of one hundred dollars (\$100.00) or less shall be billed a minimum of ~~twenty-five dollars (\$25.00)~~ **thirty-five dollars (\$35.00) additional costs.**

(2) Actual costs greater than one hundred dollars (\$100.00) shall be billed a minimum of ~~twenty-five percent (25%)~~ **thirty-five percent (35%)** of the actual cost of the work performed **additional costs.**

In the event payment therefor is not made to the City within thirty (30) days after the date of billing, all costs of such work, plus the above listed charges for inspection and other costs incurred, plus all applicable filing costs, shall become a lien against the property **secured, collected and enforced as provided in Section 8-4-20. Lien, Brighton Municipal Code, as the same may be amended.** as of the date the Director of Finance certifies said cost and charges to the office of the County Treasurer for collection in the same manner as is provided for the collection of general property taxes.

Section 8-8-220. Abatement by City; costs

(1) Actual costs of one hundred dollars (\$100.00) or less shall be billed a minimum of ~~twenty-five dollars (\$25.00)~~ **thirty-five dollars (\$35.00) additional costs.**

(2) Actual costs greater than one hundred dollars (\$100.00) shall be billed a minimum of ~~twenty-five percent (25%)~~ **thirty-five percent (35%)** of the actual cost of the work performed **additional costs.**

In the event payment therefor is not made to the City within thirty (30) days after the date of billing, all costs of such work, plus the above listed charges for inspection and other costs incurred, plus all applicable filing costs, shall become a lien against the property where such violation existed or in the event such violation was on the street, sidewalk or public property or other right-of-way of the City, upon the property adjacent and abutting the violation; **to be secured, collected and enforced as provided in Section 8-4-20. Lien, Brighton Municipal Code, as the same may be amended.** as of the date the Director of Finance certifies said cost and charges to the office of the County Treasurer for collection in the same manner as is provided for the collection of general property taxes.

Section 8-16-85. Failure to remove; abatement by City

(1) Actual costs of one hundred dollars (\$100.00) or less shall be billed a minimum of ~~twenty-five dollars (\$25.00)~~ **thirty-five dollars (\$35.00) additional costs.**

(2) Actual costs greater than one hundred dollars (\$100.00) shall be billed a minimum of ~~twenty-five percent (25%)~~ **thirty-five percent (35%)** of the actual cost of the work performed **additional costs.**

In the event payment therefor is not made to the City within thirty (30) days after the date of billing, all costs of such work, plus the above listed charges for inspection and other costs incurred, plus all applicable filing costs, shall become a lien against the property where such violation existed or in the event such violation was on the street, sidewalk or public property or other right-of-way of the City, upon the property adjacent and abutting the violation; **to be secured, collected and enforced as provided in Section 8-4-20. Lien, Brighton Municipal Code, as the same may be amended.** as of the date the Director of Finance certifies said cost and charges to the office of the County Treasurer for collection in the same manner as is provided for the collection of general property taxes.

Section 8-24-160. Failure to remove; abatement by City; costs

(1) Actual costs of one hundred dollars (\$100.00) or less shall be billed a minimum of ~~twenty-five dollars (\$25.00)~~ **thirty-five dollars (\$35.00) additional costs.**

(2) Actual costs greater than one hundred dollars (\$100.00) shall be billed a minimum of ~~twenty-five percent (25%)~~ **thirty-five percent (35%)** of the actual cost of the work performed **additional costs.**

In the event payment therefor is not made to the City within thirty (30) days after the date of billing, all costs of such work, plus the above listed charges for inspection and other costs incurred, plus all applicable filing costs, shall become a lien against the property **secured, collected and enforced as provided in Section 8-4-20. Lien, Brighton Municipal Code, as the same may be amended.** as of the date the Director of Finance certifies said cost and charges to the office of the County Treasurer for collection in the same manner as is provided for the collection of general property taxes.

OPTIONS FOR COUNCIL CONSIDERATION:

Approve Resolution

Reject Resolution

ATTACHMENTS

Full text of the ordinances affected.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AMENDING THE BRIGHTON MUNICIPAL CODE RELATED TO RECOVERY OF THE CITY'S COSTS OF CODE ENFORCEMENT AS SET FORTH IN SUBSECTIONS 8-8-80(1) AND (2), WEED ABATEMENT; 8-8-220(1) AND (2), TREES AND PLANTS; 8-16-85, LITTER AND TRASH; AND 8-24-160(1) AND (2), NUISANCES; AND SETTING FORTH DETAILS IN RELATION THERETO.

ORDINANCE NO. _____

INTRODUCED BY: _____

WHEREAS, the ordinance provisions related to the administrative costs incurred by the City when the City is required to abate nuisances and other Municipal Code enforcement when a property owner, lessee or occupant fails to comply with notices from the City have not been updated since 1999; and

WHEREAS, the City Council finds that it is time to increase the costs for Code enforcement to reflect a reasonable amount incurred by the City in such actions.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AS FOLLOWS:

Section 1. Sections

8-8-80. Failure to remove; abatement by City; costs (weeds, brush, rubbish and junk);

8-8-220. Abatement by City; costs; (trees and plants);

8-16-85. Failure to remove; abatement by City (litter and obstructions); and

8-24-160. City to perform work; costs (nuisances)

are hereby repealed and reenacted to read as follows:

Section 8-8-80. Failure to remove; abatement by City; costs

If the person upon whom such notice is served fails, neglects or refuses to abate the violation within ten (10) days of service of such notice on land which he or she owns, leases or occupies, as required by this Division, the City Manager, without further notice, may cause the necessary work to be performed to bring such property into compliance with this Division. Therefore, reasonable efforts shall be made to notify the owner, lessee or occupant of the costs thereof, plus charges authorized in this Division; provided, however, that in no event shall failure of the owner, lessee or occupant to receive notice of the costs and charges void the lien provided for in this Division. The costs of such work, plus additional charges for inspection and other costs in connection therewith shall be billed to the person responsible for said property. These additional charges are as follows:

(1) Actual costs of one hundred dollars (\$100.00) or less shall be billed a minimum of ~~twenty-five dollars (\$25.00)~~ **thirty-five dollars (\$35.00)** additional costs.

(2) Actual costs greater than one hundred dollars (\$100.00) shall be billed a minimum of ~~twenty-five percent (25%)~~ **thirty-five percent (35%)** of the actual cost of the work performed.

*In the event payment therefor is not made to the City within thirty (30) days after the date of billing, all costs of such work, plus the above listed charges for inspection and other costs incurred, plus all applicable filing costs, shall become a lien against the property **secured, collected and enforced as provided in Section 8-4-20. Lien, Brighton Municipal Code, as the same may be amended.** ~~as of the date the Director of Finance certifies said cost and charges to the office of the County Treasurer for collection in the same manner as is provided for the collection of general property taxes.~~*

Section 8-8-220. Abatement by City; costs

If the person upon whom such notice is served fails, neglects or refuses to abate the violation within ten (10) days of service of such notice on land which he or she owns, leases or occupies, as required by this Division, the City Manager, without further notice, may cause the necessary work to be performed to bring such property into compliance with this Division. Therefore, reasonable efforts shall be made to notify the owner, lessee or occupant of the costs thereof, plus charges authorized in this Division; provided, however, that in no event shall failure of the owner, lessee or occupant to receive notice of the costs and charges void the lien provided for in this Division. The costs of such work, plus additional charges for inspection and other costs in connection therewith shall be billed to the person responsible for said property. These additional charges are as follows:

- (1) Actual costs of one hundred dollars (\$100.00) or less shall be billed a minimum of ~~twenty-five dollars (\$25.00)~~ **thirty-five dollars (\$35.00)** additional costs.*
- (2) Actual costs greater than one hundred dollars (\$100.00) shall be billed a minimum of ~~twenty-five percent (25%)~~ **thirty-five percent (35%)** of the actual cost of the work performed.*

*In the event payment therefor is not made to the City within thirty (30) days after the date of billing, all costs of such work, plus the above listed charges for inspection and other costs incurred, plus all applicable filing costs, shall become a lien against the property where such violation existed or in the event such violation was on the street, sidewalk or public property or other right-of-way of the City, upon the property adjacent and abutting the violation; **to be secured, collected and enforced as provided in Section 8-4-20. Lien, Brighton Municipal Code, as the same may be amended.** ~~as of the date the Director of Finance certifies said cost and charges to the office of the County Treasurer for collection in the same manner as is provided for the collection of general property taxes.~~*

Section 8-16-85. Failure to remove; abatement by City

If the person upon whom such notice is served fails, neglects or refuses to abate the violation within ten (10) days of service of such notice on land which he or she owns, leases or occupies, as required by this Division, the City Manager, without further notice, may cause the necessary work to be performed to bring such property into compliance with this Division. Therefore, reasonable efforts shall be made to notify the owner, lessee or occupant of the costs thereof, plus charges authorized in this Division; provided, however, that in no event shall failure of the owner, lessee or occupant to receive notice of the costs and charges void the lien provided for in this Division. The costs of such work, plus additional charges for inspection and other costs in connection therewith shall be billed to the person responsible for said property. These additional charges are as follows:

- (1) Actual costs of one hundred dollars (\$100.00) or less shall be billed a minimum of ~~twenty-five dollars (\$25.00)~~ **thirty-five dollars (\$35.00)** additional costs.
- (2) Actual costs greater than one hundred dollars (\$100.00) shall be billed a minimum of ~~twenty-five percent (25%)~~ **thirty-five percent (35%)** of the actual cost of the work performed.

*In the event payment therefor is not made to the City within thirty (30) days after the date of billing, all costs of such work, plus the above listed charges for inspection and other costs incurred, plus all applicable filing costs, shall become a lien against the property where such violation existed or in the event such violation was on the street, sidewalk or public property or other right-of-way of the City, upon the property adjacent and abutting the violation; **to be secured, collected and enforced as provided in Section 8-4-20. Lien, Brighton Municipal Code, as the same may be amended.** ~~as of the date the Director of Finance certifies said cost and charges to the office of the County Treasurer for collection in the same manner as is provided for the collection of general property taxes.~~*

Section 8-24-160. Failure to remove; abatement by City; costs

If the person upon whom such notice is served fails, neglects or refuses to abate the violation within ten (10) days of service of such notice on land which he or she owns, leases or occupies, as required by this Division, the City Manager, without further notice, may cause the necessary work to be performed to bring such property into compliance with this Division. Therefore, reasonable efforts shall be made to notify the owner, lessee or occupant of the costs thereof, plus charges authorized in this Division; provided, however, that in no event shall failure of the owner, lessee or occupant to receive notice of the costs and charges void the lien provided for in this Division. The costs of such work, plus additional charges for inspection and other costs in connection therewith shall be billed to the person responsible for said property. These additional charges are as follows:

- (1) Actual costs of one hundred dollars (\$100.00) or less shall be billed a minimum of ~~twenty-five dollars (\$25.00)~~ **thirty-five dollars (\$35.00)** additional costs.
- (2) Actual costs greater than one hundred dollars (\$100.00) shall be billed a minimum of ~~twenty-five percent (25%)~~ **thirty-five percent (35%)** of the actual cost of the work performed.

*In the event payment therefor is not made to the City within thirty (30) days after the date of billing, all costs of such work, plus the above listed charges for inspection and other costs incurred, plus all applicable filing costs, shall become a lien against the property **secured, collected and enforced as provided in Section 8-4-20. Lien, Brighton Municipal Code, as the same may be amended.** ~~as of the date the Director of Finance certifies said cost and charges to the office of the County Treasurer for collection in the same manner as is provided for the collection of general property taxes.~~*

Section 2. Purpose. The purpose of this Ordinance is to provide for the health, safety and welfare of the people.

Section 3. Repeal. Existing or parts of ordinances covering the same matters as embraced in this Ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed, except that this repeal shall not affect or prevent

the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this Ordinance

Section 4. **Validity.** If any part or parts of this Ordinance are for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each part or parts thereof, irrespective of the fact that any one part or parts be declared invalid.

Section 5. **Interpretation.** This Ordinance shall be so interpreted and construed as to effectuate its general purpose.

INTRODUCED, PASSED ON FIRST READING AND ORDERED PUBLISHED THIS 18th DAY OF November, 2014.

CITY OF BRIGHTON, COLORADO

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Margaret R. Brubaker, City Attorney

Published in the *Standard Blade*
First Publication: November 26, 2014

**PASSED ON SECOND AND FINAL READING AND ORDERED PUBLISHED BY
TITLE ONLY THIS _____ DAY OF _____, 2014.**

CITY OF BRIGHTON, COLORADO

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

Published in the *Standard Blade*

Final Publication: _____



Staff Report

File #: ID-258-14, **Version:** 1

Department of Municipal Court

Reference: To repeal Brighton Municipal Code (BMC) 9-12-20 regarding the charge of trespass and to amend as subsection of 9-12-10(c); amend section 9-16-20 disorderly conduct; amend section 9-16-40(a)(4) & (c) harassment; repeal and reenact 9-16-51 public indecency, 9-16-52 indecent exposure & 9-16-53 public urination and defecation

To: Mayor Richard N. McLean and Members of City Council

Through: Manuel Esquibel, City Manager

Prepared By: Michelle Ramos, Court Administrator

Date Prepared: November 5, 2014

PURPOSE: To Amend by Ordinance the Brighton Municipal Code Section 9-12-20 to omit limitations on the municipal court when imposing sanctions for violations of trespass; to amend and adopt 9-16-20 disorderly conduct setting forth what constitutes disorderly conduct; to adopt subsections 9-16-90(a)(4) and (c) to address electronic forms of harassment; to repeal and reenact 9-16-51 public indecency, 9-16-52 indecent exposure, and 9-16-53 public urination & defecation.

BACKGROUND:

Section 9-12-20 of the BMC sets the current penalty provisions for the charge of Trespass which unduly limits the discretion of the Municipal Court. (1st offense fine \$25.00 - \$300.00, no jail) Amending this section to allow the provisions of section 1-24-10 to be applicable would provide the appropriate penalties and discretion which should be applied to trespass violations in the City of Brighton.

Section 9-16-20 of the BMC is vague, outdated and open to interpretation of the officer, defendant, court, and city prosecutor. The amendment to this ordinance would present to the Brighton Police Department, the Court, and the City Prosecutor a clearer standard of the charge of Disorderly Conduct and would track the language of the state statute for this charge.

Amending section 9-16-90 of the BMC in reference to Harassment to include communication by electronic devices is a necessary reflection of the growing usage of electronic media, cell phones, and the internet. This amendment affords the Brighton Police Department the opportunity to accurately cite a defendant for a crime which would involve modern technology in the interest of public safety.

The BMC sections 9-16-51 public indecency and 9-16-52 indecent exposure currently limits the exposure of a person in public or in public view. To repeal and reenact these sections would cover situations outlined in C.R.S 18-7-302, which addresses exposure under circumstances which cause affront or alarm. This exposure could occur in a private place. (example: Defendant hired cleaning crew to clean his home and was exposing himself to the ladies as they worked.)

The amendment to 9-16-53 public urination and defecation would add the possibility that the act could reasonably be seen by members of the public.

FINANCIAL IMPACT

N/A

OPTIONS FOR COUNCIL CONSIDERATION

- 1) Approve
- 2) Not approve

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, REPEALING THE BRIGHTON MUNICIPAL CODE SECTION 9-12-20. VIOLATION AND PENALTY FOR TRESPASS AND ADOPTING A NEW SUBSECTION 9-12-10(c) SETTING PENALTIES FOR TRESPASS VIOLATIONS IN ACCORDANCE WITH ARTICLE 1-24 GENERAL PENALTY; ADOPTING SECTION 9-16-20 DISORDERLY CONDUCT SETTING FORTH WHAT CONSTITUTES DISORDERLY CONDUCT; AND ADOPTING SUBSECTIONS 9-16-90(a)(4) and (c) HARASSMENT TO INCLUDE ELECTRONIC FORMS OF HARASSMENT; REPEALING AND REENACTING OR AMENDING SECTIONS 9-16-51. PUBLIC INDECENCY, 9-16-52. INDECENT EXPOSURE, AND 9-16-53, PUBLIC URINATION AND DEFECTION; AND, SETTING FORTH DETAILS IN RELATION TO THE FOREGOING.

ORDINANCE NO. _____

INTRODUCED BY: _____

WHEREAS, the current penalty provisions related to defendant convicted of or pleading guilty to trespass violations unduly limit the discretion of the Municipal Court to determine the appropriate penalties for such trespass violations ; and

WHEREAS, the penalty and other provisions of Article 1-24. General Penalty of the Brighton Municipal Code provide the appropriate penalties and discretion afforded the Municipal Court and should be made applicable to trespass violations; and

WHEREAS, the City has an overriding interest in prohibiting conduct or speech which incites other to unlawful conduct or provokes retaliatory action amounting to a breach of the peace and clear enough in its prohibitions that people of common intelligence need not guess at its meaning; and

WHEREAS, the provisions prohibiting harassment should include electronic means of communication over and beyond the telephone; and

WHEREAS, the City has an overriding interest in prohibiting conduct or speech which incites other to unlawful conduct or provokes retaliatory action amounting to a breach of the peace and clear enough in its prohibitions that people of common intelligence need not guess at its meaning; and

WHEREAS, the commission of acts constituting indecency, indecent exposure, and public urination and defecation that occur in such a manner and place should be prohibited whether in a public place or where the conduct may reasonably be expected to be viewed by members of the public; and

WHEREAS, the City Council finds and determines that the additions and amendments to the Brighton Municipal Code set forth in this ordinance are necessary for the protection of the public health, safety and welfare and are within the constitutional protections of free speech.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AS FOLLOWS:

Section 1. Section 9-12-20. Violation and penalty for trespass of the Brighton Municipal Code is hereby repealed.

~~Sec. 9-12-20. Violation and penalty for trespass.~~

~~(a) A person who is found guilty or enters a plea of guilty or nolo contendere to violating Section 9-12-10 shall be punished as follows:~~

~~(1) For the first offense, a fine of not less than twenty-five dollars (\$25.00) nor more than three hundred dollars (\$300.00);~~

~~(2) For the second offense committed within five (5) years of a first offense, a fine of not less than fifty dollars (\$50.00) nor more than three hundred dollars (\$300.00);~~

~~(3) For the third and all subsequent offenses committed within five (5) years of the first offense, a minimum penalty of a three-hundred dollar fine.~~

~~(b) The minimum fines imposed by this Section shall be mandatory and the Court shall not suspend a fine, in whole or in part.~~

Section 9-12-10. Acts constituting trespass is amended by the addition of a new subsection (c) to read as follows:

(c) A person who is found guilty or enters a plea of guilty or nolo contendere to violating this Section 9-12-10, as the same may be amended, shall be punished as provided in Article 1-24. General penalty of this Code.

Section 2. Section 9-16-20 Disorderly conduct of the Brighton Municipal Code is hereby repealed and reenacted in its entirety to read as follows:

Sec. 9-16-20. **Disorderly conduct.**

~~It is unlawful for any person to disturb or to tend to disturb peace of others by violent, tumultuous, offensive or obstreperous conduct, by loud or unusual noises by unseemly, profane, obscene or offensive language calculated to provoke a breach of the peace; or by assaulting, striking or fighting another; or for any person to permit any such conduct in any house or upon any premises owned or possessed by him or her or under his or her management or control, when the prohibition of such acts is within his or her power to prevent, so that others in the vicinity are or may be disturbed thereby.~~

(1) A person commits disorderly conduct if he or she intentionally, knowingly, or recklessly:

(a) Makes a coarse and obviously offensive utterance, gesture, or display in a public place and the utterance, gesture, or display tends to incite an immediate breach of the peace; or

(b) *Makes an unreasonable noise in a public place near a private residence that he or she has no right to occupy, which, under all of the circumstances presented, would cause a person of ordinary sensitivities significant annoyance and irritation; or*

(c) *Fights with another in a public place except in an amateur or professional contest of athletic skill;*

(d) *Not being a peace officer, discharges a firearm in a public place except when engaged the ritual discharge of blank ammunition cartridges as an attendee at a funeral for a deceased person who was a veteran of the armed forces of the United States;*

(e) *Not being a peace officer, displays a deadly weapon, displays any article used or fashioned in a manner to cause a person to reasonably believe that the article is a deadly weapon, or represents verbally or otherwise that he or she is armed with a deadly weapon in a public place in a manner calculated to alarm.*

Section 3. Subsections 9-16-90(a)(4) and (c) Harassment of the Brighton Municipal Code are hereby repealed and reenacted in their entirety to read as follows:

Sec. 9-16-90. Harassment

~~(a)(4) Initiate communication with a person, anonymously or otherwise by telephone, in a manner intended to harass or threaten bodily injury or property damage, or make any comment, request, suggestion or proposal by telephone which is obscene;~~

(a)(4) Initiate communication with a person, anonymously or otherwise by telephone, TELEPHONE NETWORK, TEXT MESSAGE, INSTANT MESSAGE, COMPUTER, COMPUTER NETWORK, OR COMPUTER SYSTEM in a manner intended to harass or threaten bodily injury or property damage, or make any comment, request, suggestion or proposal by telephone, TELEPHONE NETWORK, TEXT MESSAGE, INSTANT MESSAGE, COMPUTER, COMPUTER NETWORK OR COMPUTER SYSTEM that is obscene;

~~(c) Any act prohibited by Subsection (a)(4) above may be deemed to have occurred or to have been committed at the place at which the telephone call was either made or received.~~

(c) Any act prohibited by Subsection (a)(4) above may be deemed to have occurred or to have been committed at the place at which the telephone call, TEXT MESSAGE, INSTANT MESSAGE, ELECTRONIC MAIL, OTHER ELECTRONIC COMMUNICATION OR OTHER COMPUTER-CREATED COMMUNICATION was either made or received.

Section 4. Sections 9-16-51. Public indecency, 9-16-52. Indecent exposure, and 9-16-52, Public urination and defecation are repealed and reenacted in their entirety or amended to read as follows:

Sec. 9-16-51. Public indecency.

~~It is unlawful for any person to commit the following acts in a public place, or where the conduct may reasonably be expected to be viewed by members of the public:~~

- ~~(1) An act of sexual intercourse;~~
- ~~(2) A lewd exposure of the body done with the intent to arouse or to satisfy the sexual desire of any person; or~~
- ~~(3) A lewd fondling or caress of the body of another person.~~

(1) Any person who performs any of the following in a public place or where the conduct may reasonably be expected to be viewed by members of the public commits public indecency:

(a) An act of sexual intercourse; or

(b) A lewd exposure of an intimate part of the body as defined herein, not including the genitals, done with intent to arouse or to satisfy the sexual desire of any person; or

(c) A lewd fondling or caress of the body of another person; or

(d) A knowing exposure of the person's genitals to the view of a person under circumstances in which such conduct is likely to cause affront or alarm to the other person.

(2) "Intimate parts" means the external genitalia or the perineum or the anus or the buttocks or the pubes or the breast of any person.

Sec. 19-16-52. Indecent exposure.

~~It is unlawful in a public place or where the conduct may reasonably be expected to be viewed by members of the public for any person to knowingly expose his or her genitals to the view of any person under circumstances in which such conduct is likely to cause affront or alarm to the other person.~~

(1) A person commits indecent exposure:

(a) If he or she knowingly exposes his or her genitals to the view of any person under circumstances in which such conduct is likely to cause affront or alarm to the other person with the intent to arouse or to satisfy the sexual desire of any person; or

(b) If he or she knowingly performs an act of masturbation in a manner which exposes the act to the view of any person under circumstances in which such conduct is likely to cause affront or alarm to the other person.

(2) For purposes of this section, "masturbation" means the real or simulated touching, rubbing, or otherwise stimulating of a person's own genitals or pubic area for the purpose of sexual gratification or arousal of the person, regardless of whether the genitals or pubic area is exposed or covered.

Sec. 9-16-53. Public urination and defecation.

It is unlawful for any person to urinate or defecate in any public place where such conduct is likely to be viewed by any other person OR WHERE THE CONDUCT MAY REASONABLY BE EXPECTED TO BE VIEWED BY MEMBERS OF THE PUBLIC and causes affront or alarm to such other person. It shall not be an offense under this Section if such urination and defecation is done in a public place designated for such purposes.

Section 5. Purpose. The purpose of this Ordinance is to provide for the health, safety and welfare of the people.

Section 6. Repeal. Existing or parts of ordinances covering the same matters as embraced in this Ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed, except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this Ordinance

Section 7. Validity. If any part or parts of this Ordinance are for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each part or parts thereof, irrespective of the fact that any one part or parts be declared invalid.

Section 8. Interpretation. This Ordinance shall be so interpreted and construed as to effectuate its general purpose.

INTRODUCED, PASSED ON FIRST READING AND ORDERED PUBLISHED THIS 18th DAY OF November, 2014.

CITY OF BRIGHTON, COLORADO

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Margaret R. Brubaker, City Attorney

Published in the *Standard Blade*
First Publication: November 26, 2014

**PASSED ON SECOND AND FINAL READING AND ORDERED PUBLISHED BY
TITLE ONLY THIS _____ DAY OF _____, 2014.**

CITY OF BRIGHTON, COLORADO

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

Published in the *Standard Blade*
Final Publication: _____



Staff Report

File #: ID-205-14, **Version:** 1

Department of Administrative Services

Reference: Fringe Benefits

To: Mayor Richard N. McLean and Members of City Council

Through: Manuel Esquibel, City Manager

Prepared By: Karen Borkowski Surine

Date Prepared: 10/1/14

PURPOSE

To establish fringe benefits for regular full-time and regular part-time employees and City Council for fiscal year 2015.

BACKGROUND

The City of Brighton contracts with HUB International Southwest, Inc. for the purpose of soliciting and negotiating bids for benefits, assisting employees with medical billing issues, assisting us with the requirements of the Patient Protection and Affordable Care Act and analyzing data. This year the City of Brighton opted to have medical benefits self-funded. A team consisting of Manuel Esquibel, City Manager, Lynn Baker, HUB International Client Manager, Marv Falconburg, Asst. City Manager for Development, Dan Frelund, Finance Director, Kale Olson, Asst. Recreation Coordinator & EAC Vice-chairperson, Terry Reams, HUB International Senior Vice- President, Murphy Robinson, CM Intern and EAC Chairperson, Karen Borkowski Surine, Administrative Services Director, Danny Talley, Senior Vice-President, HUB International, Kathy Viveros, HR Analyst, and Nathan Wolfe, HUB International Underwriter met monthly to review funding options, recommend educational efforts and data projections. The goal of this renewal is to mitigate costs of the Patient Protection and Affordable Health Care Act, specifically prescription benefits that will be allowed to be counted towards annual deductibles in 2015 and provide employees with comparable coverage to what they have become accustomed to as well as provide a financially viable benefits plan. At this time, staff recommends medical benefits continue to be self-funded and that the insurance provider continue to be United Healthcare.

The cost to the City for healthcare benefits in 2015 is \$3,117,650. The City has set aside \$425,000 in reserves to cover expenses that may be incurred above the expected claims. Please see Exhibit A for the 2015 Employee Benefit Summary.

The City of Brighton will continue to pay the entire cost of benefits for its employees (as addressed in Exhibit A). Employees electing to cover family members will pay the same premium as last year. Employees will have a choice to go with one of two United Healthcare options; In Network PPO only or a PPO allowing for higher In Network and Out of Network options. In 2015, prescription medications will be counted towards the out of pocket maximum. The co-pay amounts will increase in each plan to cover this mandate. Other plan design changes have been implemented to mitigate the high usage seen in 2014.

With a self-funded medical benefits plan it is very important to make an effort to control costs with a Wellness program. The City will continue with a strong education campaign for employees and City staff is continuing to partner with PVMC

for on-site health coaching in 2015. This program will allow employees to confidentially work with a medical professional to reach their healthcare goals. The City is also contracting with HUB for the Telehealth benefits package. Telehealth consists of Teledoc, Health Advocate and eDocAmerica. Teledoc gives employees 24/7 access to US board-certified doctors and pediatricians for no cost to the employee or the City medical plan per consultation. If appropriate, the physician will prescribe medication and call in the prescription to the member's pharmacy of choice. It is ideal for routine, nonemergency issues (colds, flu, bronchitis, sinus problems, allergies and more. The Health Advocates is available to employees and covered dependents at no cost and is also available 24/7. The Health Advocates helps employees and covered dependents coordinate care among doctors and medical institutions in various ways, to include negotiating a reduction on the amount due to a provider if the balance is more than \$400. eDocAmerica provides 24/7 e-mail access to this medical team. Employees can ask any medical or health questions and get a personal, direct answer. Members also have access to a video library and the program sends out weekly health tips via e-mail from doctors. The City has budgeted \$30,000 for the Wellness program.

The **Dental Insurance** provider this year is Delta Dental plan. Since there have been no major issues with Delta Dental plan and they have not increased the premium for participating in their plan, staff is recommending continuing with this plan. The City of Brighton covers the entire cost for dental insurance for the employees. The cost for employees electing coverage for their family is \$23.10 per month. The total cost to the City for dental coverage in 2015 is \$181,021. In 2016 we will be exploring taking this program to a self-funded plan.

The **Vision Provider** is VSP. The cost in 2014 was \$59,979 and will be \$62,977.95 in 2015. Staff recommends continuing with VSP and maintaining the same coverage.

The City currently has coverage for **Life/AD&D, Long Term Disability and Short Term Disability** with Mutual of Omaha. The cost to the City for the premium for 2015 is \$98,616.

The maximum contribution into the Flexible Spending Account is \$2,500 for healthcare. Eligible dependent care contributions and reimbursements may not exceed \$5,000 each calendar year. This is the same as last year and follows IRS guidelines.

The Anthem Pro Employee Assistance Program provides up to five free consultations with professionals in counseling, legal, geriatric and financial services per incident per year for regular employees. This benefit is well used by our employees. The cost to the City for this program is \$15,000.

Regular full-time and part-time benefitted employees and their families can obtain a Family Pass to the Brighton Recreation Center through the Employee Wellness Program at no cost. The cost for a Family Pass for a resident is \$470 and for a non-resident is \$595. This represents quite a savings for health conscious families. The Recreation Center Staff and Director Gary Wardle reported that the addition of this benefit has not caused a burden to the staff.

FINANCIAL IMPACT

The total benefits package is \$3,505,269.95. The City's cost for fringe benefits is included in the adopted 2015 budget.

STAFF RECOMMENDATION

Staff recommends approval of the proposed Ordinance. The negotiation skills of our broker, employee education by the Human Resources Department, the Wellness partnership with PVMC and the support of City Council has allowed us to keep the premium cost for benefits the same for employees and still allow us to have a very good benefits package. Self-funding our benefits allows us an alternative to buying traditional health insurance with fewer state mandatory benefits, freedom to tailor the plan design to meet the City's loss history and future goals, eliminates insurance company overhead and fees, improves cash flow by allowing us to hold claims dollars until they are actually needed and gives the City better access to claims data to examine areas of utilization while still maintaining patient privacy.

OPTIONS FOR COUNCIL CONSIDERATION

Approve the proposed benefits package or request staff come up with a different option.

ATTACHMENTS

Benefit summary for 2015.

Ordinance adopting benefits.

Benefit Summary for 2015

Medical- United HealthCare

UHC Choice PLAN

***Single** coverage paid in full by the City of Brighton. **FULLTIME EMPLOYEE DOES NOT CONTRIBUTE.**

***Employee + Spouse** employee contributes \$252.40 (\$126.20 per 2 pay checks per month).

***Employee + Child(ren)** employee contributes \$206.72 (\$103.36 per 2 pay checks per month).

***Employee + Family** employee contributes \$364.16 (\$182.08 per 2 pay checks per month).

Coverage In-Network:

- \$25 physician office visit
- \$50 specialist office visit
- Deductible: *single* \$1,000, *family* \$3,000
- *Single* out of pocket maximum is \$4,000, *family* out of pocket \$8,000
- Inpatient Ded + 20%
- Outpatient Ded + 20%
- Urgent care is \$75
- Emergency room \$300
- MRI/CT Scan \$250
- Prescription \$15/\$40/\$60
- Lifetime maximum unlimited per person

UHC Choice Plus PLAN

***Single** coverage paid in full by the City of Brighton. **FULLTIME EMPLOYEE DOES NOT CONTRIBUTE.**

***Employee + Spouse** employee contributes \$220.04 (\$110.02 per 2 pay checks per month).

***Employee + Child(ren)** the employee contributes \$180.22 (\$90.11 per 2 pay checks per month).

***Employee + Family** employee contributes \$317.46 (\$158.73 per 2 pay checks per month)

Coverage plan:

- \$30 In-Network physician visit, Out-of-Network office visit deductible +60%
- \$60 In-Network specialist office, Out-of-Network specialist office visit deductible +60%
- In-Network *single* deductible is \$1,500, *family* deductible is \$4,500; Out-of-Network *single* deductible is \$5,000, *family* deductible is 10,000.
- In-Network *single* out of pocket maximum is \$5,000, *family* out of pocket maximum is \$10,000, Out-of-Network *single* out of pocket maximum is \$10,000, *family* out of pocket maximum is \$20,000
- MRI In-Network deductible + 20%, Out-of-Network is deductible + 60%
- Prescription drugs In-Network are \$15/\$40/\$60, Out-of-Network none
- In-Network Outpatient deductible + 20%, Out-of-Network is deductible + 60%
- In-Network Inpatient deductible +20%, Out-of-Network is deductible + 60%
- In-Network emergency care is \$300 Out-of-Network is \$300
- Lifetime maximum combined In-Network and Out-of-Network is unlimited per person

Dental – DELTA

***Single** coverage paid in full by the City of Brighton. **FULLTIME EMPLOYEE DOES NOT CONTRIBUTE.**

***Employee + Family** the employee contributes \$23.10 per month (\$11.55 per 2 pay checks per month)

Coverage

- PPO plan
- 100% of preventive services, no deductible
- 80% basic services
- 50% major services
- \$25 calendar year deductible for basic and major \$75 calendar year deductible for family

***Costs paid by employees hired at 0.5 or 0.75 time are different than those listed here, which are for fulltime employees. Please ask an HR representative for additional information on what these costs are.**

Continued...

Orthodontics (**children only until the age of 19, if a full time student**)

- 50% no deductible
- \$1,500 **lifetime** maximum

Vision- Vision Service Plan (VSP)

***Single** coverage paid in full by the City of Brighton. **FULLTIME EMPLOYEE DOES NOT CONTRIBUTE.**

***Employee + 1** the employee contributes \$4.97 (\$2.48 per 2 pay checks per month)

***Employee + 2** the employee contributes \$8.90 (\$4.45 per 2 pay checks per month)

- Routine eye exam every 12 months / \$0 co- pay
- Materials every 12 months/ \$20 co-pay
 - Lenses covered at 100%
 - **Frames covered up to \$120
 - **Contact Lenses covered up to \$105

****You may choose either glasses or contacts within the 12-month period.**

Life & AD&D – Mutual of Omaha

Paid in full by the City of Brighton.

Coverage

- Each employee receives \$100,000 Life Insurance and AD&D up to age 65. Benefits reduce starting at age 65.

Long Term Disability – Mutual of Omaha

Paid in full by the City of Brighton.

Coverage

- Long Term Disability pays 60% of the employee's salary, up to a maximum of \$8,000/month. Benefits can continue up to normal retirement age of 65.

Short Term Disability – Mutual of Omaha

Coverage

- Paid at 75% of employee's straight salary after the 6-month probationary period has been satisfied following a 15 day waiting period. Benefit is for 90 days then Long Term Disability begins.

Retirement Plans – The City of Brighton has a 401a retirement plan that the City of Brighton contributes 9% and the employee contributes 9%. The 401a is required for all regular full-time and regular part-time employees. **The City does NOT contribute to Social Security.** Deferred compensation (457) is also available to regular full-time and regular part-time employees and is at the employee's option and expense. It is a voluntary savings plan requiring a fixed contribution to a savings account. Sworn police officers are part of FPPA (Fire Police Pension Association).

Employee Assistance Program- The City of Brighton offers an Employee Assistance Program that provides confidential assistance for employees with personal, family or workplace issues.

Flexible Spending Account – PayFlex Systems USA, Inc

- This plan is available to regular full-time and regular part-time employees.

Employee Wellness Program- The City of Brighton provides employee and family members/dependents annual membership at the Brighton Recreation Center.

Telehealth Program – Available to all employees at no cost.

BRIGHTON CITY COUNCIL ORDINANCE
City Employee Benefits

ORDINANCE NO. _____
INTRODUCED BY: _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, ESTABLISHING CERTAIN BENEFITS FOR CITY PERSONNEL FOR THE 2015 BUDGET YEAR AND SETTING FORTH THE DETAILS RELATED THERETO.

WHEREAS, the City Council finds that fair and equitable personnel management tools and practices are essential for the administration of City government; and

WHEREAS, the City Council finds that the City Management does maintain and administer formal personnel policies and has assigned staff to implement and carry out the City's personnel administration; and

WHEREAS, an important component of the City's personnel policies is the provision of fringe benefits to its employees; and

WHEREAS, the City Manager, together with the Human Resources Director and other representatives of the employees of the City as well as the City's insurance broker, have undertaken an extensive analysis of available benefit providers and plans for inclusion in the City's self-funded insurance program; and

WHEREAS, after such analysis, the City Manager is recommending that the fringe benefit plan as more specifically set forth herein shall become effective January 1, 2015, is further certifying that sufficient funds have been set forth in the adopted 2015 Budget to cover the expenses associated with such plan, and is recommending that the same be approved and adopted by the City Council; and

WHEREAS, the City Council finds that the provisions of this Ordinance are necessary and proper in order to serve, protect and otherwise provide for the public health safety and general welfare of its employees.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO THAT THE FOLLOWING BENEFITS BE ESTABLISHED FOR THE CALENDAR YEAR 2015:

Section 1. Fringe Benefits

A. Regular full-time and regular part-time employees:

1. The **medical/vision coverage** will be offered to all regular full-time, regular part-time City employees, Municipal Judge, Associate Municipal Judge and City Council. The City will pay the premium for any single full-time employee. Regular part-time employees will pay a proportionate share of the premium for both the employee and family coverage. The City is self-funding medical benefits and included in the projected costs are administrative costs, taxes, fees, stop loss insurance, expected claims and a reserve fund to mitigate potential liability between expected and maximum claims. Employee benefits costs are attached as “Exhibit A.”
2. A **dental plan** will be offered to all regular full-time and regular part-time City employees, the Mayor and members of City Council. The City will pay 100% of the dental premium for any single full-time employee. Regular part-time employees will pay a proportionate share of the premium for both employee and family coverage. Cost breakdowns are attached as “Exhibit A.”
3. **Life insurance, long-term disability, accidental death and dismemberment coverage** will be provided to all regular full-time employees, the Mayor and City Council members in the amount of \$100,000.00 up to age 65 and at a reduced amount thereafter. Regular part-time employees will be covered at \$50,000.00 up to age 65. The City will pay 100% of the premiums for the employees, the Mayor and City Council members. Department Directors and the City Manager will be provided coverage at \$200,000.00 up to age 65. Coverage is pro-rated down once the age of 65 is reached.
4. **Free and discounted usage fees at the City of Brighton Recreation Center** are as follows:
 - a. All current regular full-time and regular part-time employees will have free access to the Brighton Recreation Center through the Employee Wellness Program.
 - b. All current regular full-time and regular part-time employees may receive a Family Pass to the Brighton Recreation Center at no charge for use by a spouse and their dependent children (up to age 21) who reside at the same address.
 - c. All volunteer members and alternates of City Boards and Commissions and the Mayor and City Council members are eligible for an Employee Wellness Program pass. The amount of an individual pass can be applied toward the purchase of an annual family pass.
5. The **Flexible Spending Account** limit is \$2,500.00 for healthcare and \$5,000 for dependent care (following approved guidelines). The account is managed by PayFlex for all regular full-time and part-time employees enrolled in this program. Employees must have signed up for the program and have a minimum of \$5.00 per pay period deducted from their pay during Open Enrollment in 2014 for calendar year 2015.
6. The **retirement contribution** for the City shall remain at 9% through December 31, 2015 for regular employees. City Council member’s retirement contribution shall remain at 7.5%.

7. The City shall pay 100% of the premium for any single sworn police officer's Fire and Police Pension Association's Death and Disability Plan premium.
8. City Manager, Assistant City Manager and Department Directors:
 1. The City will pay 100% of the premium for single or family care coverage for medical/vision/dental/life/long-term disability/accidental death and dismemberment insurance for the City Manager, Assistant City Manager and Department Directors.
 2. The Department Directors and Asst. Department Directors designated by the City Manager shall receive a car allowance as follows:
 - a. 1-400 miles per month average mileage will receive \$250.00 per month.
 - b. 401-800 miles per month average mileage will receive \$350.00 per month.
 - c. 801 miles and over per month average mileage will receive \$450.00 per month.

Section 2. Purpose. The purpose of this Ordinance is to provide for the health, safety and welfare of the people.

Section 3. Repeal. Existing or parts of ordinances covering the same matters as embraced in this Ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed, except this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violations of any ordinance hereby repealed prior to the taking effect of this Ordinance.

Section 4. Validity. If any part or parts of this Ordinance are for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each part or parts thereof, irrespective of the fact that any one part or parts be declared invalid.

Section 5. Interpretation. This Ordinance shall be so interpreted and construed as to effectuate its general purpose.

INTRODUCED, ADOPTED AT FIRST READING, AND ORDERED PUBLISHED THIS 18th DAY OF NOVEMBER, 2014.

CITY OF BRIGHTON, COLORADO

**By: _____
Richard N. McLean, Mayor**

ATTEST:

Natalie Hoel, City Clerk

Published in the *Denver Post*
Publication Date: _____

Published in the *Brighton Blade*
First Publication: _____

APPROVED AS TO FORM:

Margaret Brubaker, City Attorney

**PASSED ON SECOND AND FINAL READING AND ORDERED PUBLISHED
BY TITLE ONLY THIS _____ DAY OF NOVEMBER, 2014.**

CITY OF BRIGHTON, COLORADO

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

Published in the *Brighton Blade*
Final Publication: _____



Staff Report

File #: ID-241-14, **Version:** 1

Police Department

Reference: Presentation by Chief Blackhurst regarding the LINK IGA

To: Mayor Richard N. McLean and Members of City Council

Through: Manuel Esquibel, City Manager

Prepared By: Clint R Blackhurst, Chief of Police

Date Prepared: November 3, 2014

PURPOSE

To request the approval of the Intergovernmental Agreement between the City of Brighton and THE LINK agency.

BACKGROUND

In 1999, the Adams County District Attorney's Office led an effort to establish a juvenile assessment center to serve Adams County law enforcement agencies and communities. The name of this juvenile assessment center is the Adams County LINK. The purpose of the LINK is to assess and provide services for troubled juveniles who have either entered the criminal justice system or have truancy/disciplinary problems at school. Referrals to the LINK can be made by law enforcement agencies, municipal courts or from school administrators. The LINK is located in Thornton.

The original organization was a private, non-profit organization, governed by a board of directors and funded primarily with State and Federal grants. Over the years the grants that funded the LINK have been significantly reduced or gone away. Assessments are based on population of the member agencies and agency/community usage. Brighton's population, as a percentage of Adams County total, is 10%.

The City of Brighton presently has one member representing Brighton on the governing board of directors, Cynthia Martinez.

CONCLUSIONS

Although not as convenient a location as preferred by the City, the City's police officers or the citizens who use their services, staff believes the LINK provides the best option currently available for the community's delinquent youth.

FINANCIAL IMPACT

The LINK has recently increased their hours of operation (or on-call availability) to 24/7. The assessment for the City of Brighton is \$54,858.00 for 2015, there is an approximate 16% increase from 2014.

OPTIONS FOR COUNCIL CONSIDERATION

- 1) Approve
- 2) Decline

STAFF RECOMMENDATION

The Police Department, therefore, recommends approval of the IGA.

ATTACHMENTS

- **Resolution**
- **Intergovernmental Agreement for the Provision and Funding of the Juvenile Assessment Services by
THE LINK**

BRIGHTON CITY COUNCIL RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, CONFIRMING THE CITY OF BRIGHTON'S PARTICIPATION IN THE LINK PROGRAM IN CALENDAR YEAR 2015; APPROVING THE *INTERGOVERNMENTAL AGREEMENT FOR THE PROVISION AND FUNDING OF JUVENILE ASSESSMENT SERVICES BY THE LINK*; AUTHORIZING THE MAYOR TO EXECUTE SAID IGA ON BEHALF OF THE CITY; AND THE MAYOR WITH RATIFICATION BY CITY COUNCIL WILL APPOINT THE CITY OF BRIGHTON'S REPRESENTATIVE TO THE LINK BOARD FOR CALENDAR YEAR 2015.

RESOLUTION NO. _____

WHEREAS, pursuant to § 29-1-203 *et seq.*, and § 29-20-105 of the Colorado Revised Statutes, governmental entities are authorized and encouraged to cooperate by contracting with one another to share in the costs of services or functions for their mutual benefit; and

WHEREAS, the Link is a non-profit community assessment, mediation and intervention service for juveniles and their families who are referred to the Link from jurisdictions within the County of Adams, State of Colorado; and

WHEREAS, the participating jurisdictions have prepared and agreed to an *Intergovernmental Agreement for the Provision and Funding of Juvenile Assessment Services by the Link*, which IGA sets forth the scope of the Link program as well as the formula for determining the financial assessments for each participating jurisdiction; and

WHEREAS, the City of Brighton wishes to continue its participation in the Link for fiscal year 2015 and confirms the 2015 Annual Assessment for the City of Brighton of \$54,858 which is included in the 2015 Adopted Budget; and

WHEREAS, the Link has opened a Board Position to improve representation for the City of Brighton; and

WHEREAS, the City Council believes this action to be in the best interest of the citizens of Brighton and the surrounding areas.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Brighton, Colorado, as follows:

1. The *Intergovernmental Agreement for the Provision and Funding of Juvenile Assessment Services by the Link*, a copy of which is attached hereto, is hereby approved and the Mayor is authorized to execute said IGA on behalf of the City.
2. The City of Brighton's continuing participating in the Link for 2015 and the annual assessment of \$54,858 for such participating is hereby approved.
3. The Mayor with ratification by City Council will appoint the City's representative on the Link Board for calendar year 2015.

RESOLVED this 18th day of November, 2014

CITY OF BRIGHTON, COLORADO

By: _____
Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Margaret R. Brubaker, City Attorney

**INTERGOVERNMENTAL AGREEMENT
FOR THE PROVISION AND FUNDING OF
JUVENILE ASSESSMENT SERVICES
BY THE LINK**

THIS INTERGOVERNMENTAL AGREEMENT (hereafter "IGA") is made and entered into by and between the City of Thornton, a Colorado municipal corporation ("Thornton"), the City of Brighton, a Colorado municipal corporation ("Brighton"), the City of Commerce City, a Colorado municipal corporation ("Commerce City"), the City of Northglenn, a Colorado municipal corporation ("Northglenn"), the City of Westminster, a Colorado municipal corporation ("Westminster"), Adams County, a political subdivision of the state of Colorado represented by and through the Adams County Sheriff's Office ("Sheriff"), and The Link, A Community Assessment and Resource Center and Colorado non-profit corporation ("The Link"). The municipal corporations and the Sheriff identified herein will be referred to as "Participating Jurisdictions" and collectively as "Parties" and each individually as "Party."

WITNESSETH:

WHEREAS, Part 2 of Article I of Title 29, C.R.S., permits and encourages governments to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with one another to provide any function, service, or facility lawfully authorized by each of the contracting governments; and

WHEREAS, The Link has operated and initially served Adams County and the cities located within Adams County since its inception in October 1999, and seeks an intergovernmental agreement between itself and the identified Participating Jurisdictions it serves to establish joint funding obligations to enable The Link to continue to provide service to its Participating Jurisdictions; and

WHEREAS, the Parties collectively desire to enter into this IGA to provide funding for The Link and thereby ensure that The Link can continue to provide its services to juveniles and their parents.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and promises contained herein, the receipt and sufficiency of which are hereby confessed, it is understood and agreed as follows:

I. GENERAL PROVISIONS

- A. The Link is committed to maintaining a centralized location for the provision of assessment, mediation and intervention services for juveniles and their families who are referred to The Link from the Participating Jurisdictions; and, agrees to provide the services, as identified herein, for the Parties that are represented in this IGA.
- B. The Link shall currently continue and maintain its operation at 8461 Delaware Street, Thornton, Colorado 80260, and will provide services to the Parties from this location. Nothing herein intends to restrict The Link from moving to another location within Adams County for practical and economical purposes. The Link will operate pursuant to the direction of a Board of Directors ("Board") as established by The Link's by-laws and management will be by an administrative director.
- C. The Participating Jurisdictions hereby agree to allocate and commit funds for the 2015 operating year to be provided to The Link in accordance with the terms of this IGA.
- D. The Participating Jurisdictions may also, throughout the term of this IGA, agree, without restriction or limitation, to provide in kind contributions to The Link to assist The Link in providing services to and for the benefit of all member participants that are a Party to this IGA.

II. SERVICES PROVIDED

- A. General Service. The Parties hereto agree that The Link shall have authority over the operation of its programs and facilities which are provided for the use and benefit of the Parties to this IGA and their constituents. The Parties hereby agree that funding of The Link, by the Parties hereto, for such services shall be as provided in this IGA.
- B. Specific Services. The Link shall be authorized to provide the services identified below to children who are between the ages of 8 years of age and 17 years of age ("Juvenile"). The principle purposes and powers of The Link are to:
 - 1. Provide a centralized location for the assessment of youth and referral to community resources and other intervention programs and services for Juveniles and their families who are referred to The Link by the Participating Jurisdictions.
 - 2. Conduct complete assessments of the needs of Juveniles and their families which may include, but is not limited to, screening for

violence potential and self-destructive tendencies, abuse, neglect and future criminal behavior, risk and treatment need factors.

3. Make prompt referrals of Juveniles and their families to appropriate community services and agencies based on needs assessment and any and all other pertinent information.
4. Provide crisis and mediation intervention for Juveniles and their families referred by the Participating Jurisdictions and the Juvenile's family. The Link shall utilize a case management process to evaluate the progress of the intervention. Case management shall include developing case plans addressing issues identified in the assessment, and supervising the accomplishment of the case plan, and preparing applicable pre-sentencing and status reports for municipal courts. The Link agrees to provide up to a maximum of eleven (11) case management services per month for juveniles on probation or as a part of sentencing through the municipal court to the Parties. Each Participating Jurisdiction's use of this service shall be based on the Participating Jurisdictions proportional use of The Link's services as outlined in Exhibit A. The Director of The Link shall have authority to modify the maximum number of case management services per month as appropriate to the circumstances.
5. Coordinate and centralize the information collected by The Link for the Participating Jurisdictions involved with the Juveniles and their families.
6. Provide rapid dissemination of assessment information to municipal courts, and the Participating Jurisdictions in accordance with all laws concerning confidentiality.
7. Provide multi-tiered service approach through provision of 24 hour detention and screening services for delinquent youth placed into the juvenile detention center or intervention for applicable alternatives to detention pursuant to Senate Bill 94 and the grant monies awarded The Link pursuant to that legislation.
8. Apply for and receive grants and other sources of funding and provide all services related to Juveniles which are authorized by the terms of any such grant or funding awards.
9. Provide ongoing intake protocol training, assessment and using The Link services for Participating Jurisdictions and intervention screening for the 17th Judicial District pursuant to the requirements

of Senate Bill 94 and the grant monies awarded The Link pursuant to that legislation.

10. Provide immediate social and mental health service referrals to Juveniles through community service providers and private providers who offer such services.
 11. Provide prescreening of youth for county and municipal offenses, misdemeanor and traffic warrants within the 17th Judicial District. In addition, The Link shall provide: Personal Recognizance bonding for municipal charges; screening of youth into Level 4 Electronic Home Monitoring or shelter placement pursuant to the annual renewal of the Senate Bill 94 grant award; and screening of youth into the Juvenile Detention Center if charges are detainable.
 12. Have any additional authority and power necessary to accomplish the foregoing programs and objectives.
- C. Contracts. The Parties hereto further acknowledge and agree that The Link shall have the responsibility and authority as reasonable and necessary to carry out the powers set forth in this IGA. Such authority shall include, but not be limited to, the authority to contract and lease property, purchase all necessary supplies, equipment, materials, and services, including professional services, and further to hire and discharge employees of The Link, as deemed necessary to operate The Link.
- D. Fees. Fees, if any are to be charged for services, shall be established by The Link and shall be uniform and reasonable. Nothing herein is intended to limit the ability of The Link to charge fees for recoupment of expenses, as deemed appropriate.
- E. Usage by other Entities. The Link Board by formal Board action may permit other entities to make use of The Link services, or to permit juveniles residing outside the 17th Judicial District, to be referred to The Link. The formal Board action shall include the charge to other entities to make use of The Link services and the terms of payment for such services.

III. APPROPRIATION AND PAYMENT BY PARTIES OF THE ANNUAL ASSESSMENT

- A. Appropriation and Funding Obligations. The Parties agree to commit and have the monies appropriated to pay the Annual Assessment as requested and set forth in Exhibit A by the first day of January of the year during which said funds are to be expended by The Link. The Parties agree to pay said amounts to The Link by January 31 of the year during

which said monies are to be expended by The Link. All payments to The Link pursuant to this IGA are, however, subject to annual appropriation by the Parties hereto in the manner required by statute. It is the intention of the Parties that no multiple-year fiscal debt or other obligation shall be created by this IGA.

- B. Calculation of the Annual Assessment. The Parties agree that the portion of the budget to be assessed to each of the Participating Jurisdictions Annual Assessment shall be based upon that jurisdiction's pro rata share of the current six-year average historical juvenile transports from the jurisdiction as compared to the total for all of the Participating Jurisdictions. As a result of increased expenditures over the past 8 years, during which the agency requested no increases in annual contributions, The Link is requesting a 10% increase in the annual contributions for 2015.

Should any such jurisdiction be partially within and partially without the territorial limits of the 17th Judicial District, such Party's Juvenile transport data within the 17th Judicial District shall be computed with the pro-rata share of the Annual Assessment. Such jurisdiction shall only refer juveniles within the boundaries of the 17th Judicial District to The Link.

- C. Contributions of New Parties. In the event that any municipal jurisdiction or county enforcement agency, other than the Participating Jurisdictions, wishes to use The Link services and provide funding for such services, after January 1st of each year, such entity may be included in this IGA by amendment as a Participating Jurisdiction. The new Participating Jurisdiction's assessment for this first year shall be determined based upon that jurisdiction's proportional share of the historical juvenile arrests and/or transport data available as applicable from that jurisdiction as compared to the revised total for all of the Participating Jurisdictions times the Annual Assessment as adjusted for the number of months of service. The monies as determined by said formula will be appropriated and paid thirty (30) days subsequent to execution by all the Parties, as provided herein. For subsequent years, a new jurisdiction's Annual Assessment shall be based on the formula provided herein for Participating Jurisdictions.

IV. BUDGET

- A. Budget Process. Each year, The Link shall prepare a preliminary budget and submit said budget to The Link's Board of Director's ("Board") for approval. The budget shall contain detailed estimates of the operating expenses for the subsequent year. The budget shall identify the dollar amount of all revenue sources including the portion of revenue to be assessed to the Participating Jurisdictions ("Annual Assessment"). The

preliminary budget shall be approved by The Link's Board on or before June 1st of each year. The approved preliminary budget shall be made available to each of the governing bodies of the Parties hereto as soon as thereafter as possible.

1. The Parties may provide comments or concerns on its Annual Assessment to The Link's Board on or before July 1st of each year. The Link's Board may adjust the budget based on the comments of the Parties.
2. The final budget shall then be approved by The Link's Board and certified by the secretary and treasurer of The Link's Board. A final budget shall be submitted to each of the governing bodies of the Parties no later than August 1st of each year that this IGA is in effect.

- B. Contributions to the Budget. The Parties hereto agree to contribute to the budget based upon the formula set forth in Exhibit A for each term of this IGA.

V. FUNDS AND OPERATIONS

- A. Designation of Funds. The Link agrees that the funds paid to The Link by the Parties hereto, and any monies generated by The Link itself shall be placed into a designated fund, and any expenses incurred by reason of operation of The Link shall be paid from said fund.
- B. Choice of Depository. All monies belonging to The Link or designated for use by The Link shall be deposited in the name and to the credit of The Link with such depositories as The Link shall from time to time designate, in compliance with all applicable laws.
- C. Disbursement of Funds. No disbursements of funds as provided by this IGA shall be made from the funds of The Link except by check, or credit card under the name of The Link.
- D. Fiscal Responsibility. The Link shall not borrow money nor shall it approve any claims or incur any obligations for expenditures unless there is sufficient unencumbered cash in the appropriate fund, credited to The Link with which to pay the same.
- E. Operating and Capital Reserves. The Board of Directors of The Link shall have the authority to set aside unexpended revenues generated by the operation of The Link for purposes of providing operating and capital reserves. The Board of Directors shall also have the authority to establish a capital improvement fund to provide for the operation of the Link.

- F. Insurance. The Link's Board shall obtain and maintain adequate liability and property insurance coverage to protect against any claims and liabilities which may arise due to the activities conducted by The Link or The Link's Board in an amount not less than the monetary limitations of liability provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et. seq., as the same may be amended from time to time.
- G. Use of Funds. Nothing herein is intended to restrict or prohibit The Link from using the budget funds for any purpose as authorized by any grant funds or in connection with the services provided by The Link.

VI. RECORDS AND REPORTS

- A. Record Keeping. The Link shall maintain accounts of its funds, properties, and business transactions, in accordance with applicable law.
- B. Annual Audit. The Link shall cause to be conducted an annual audit within 180 days after the end of the calendar year. Such audit or review shall be conducted by an independent certified public accountant, registered accountants licensed to practice in the State of Colorado. The Link audit is available on site for review by the respective Parties hereto upon request of any Party.
- C. Annual Report. Beginning in 2008 and thereafter, by March 1st of each year, The Link shall prepare and present to the respective Participating Jurisdictions, a comprehensive annual report of The Link's activities and finances during the preceding year.
- D. Reports Required by Law, Regulations or Contract. The Link shall also prepare and present such reports as may be required by law, regulation, or contract to any authorized federal, state and/or local officials to whom such report is required to be made in the course and operation of The Link.
- E. Reports Requested by the Parties. The Link may, where practical, render to the Parties hereto, at reasonable requests, such reports and accountings as the Parties hereto may from time to time request.

VII. DEFAULT IN PERFORMANCE

- A. Default by The Link. If, for whatever reason, The Link ceases its operation at any time during the calendar year, with or without notice to the Participating Jurisdictions, such cessation of services shall constitute a material breach of this IGA and will relieve the Participating Jurisdictions of their funding obligation for any pro rata share of funding submitted for

the end of the IGA term. Upon notification from The Link to the Participating Jurisdictions of such cessation of services, The Link agrees to reimburse to the Participating Jurisdictions their pro rata share to the extent that such funds are available. Upon such notice, the terms and conditions this IGA automatically terminates and relieves the Participating Jurisdictions of any and all obligations contained herein. The same shall apply to Brighton if any one of its three payments is not paid in full on the due date.

- B. Default by Participating Jurisdiction. In the event that any Participating Jurisdiction fails or refuses to provide the agreed upon funding pursuant to Exhibit A for any calendar year, after January 31st of such calendar year, such failure to pay shall constitute a material breach of this IGA. The Link shall notify the Participating Jurisdiction of such breach and if such breach is not cured within 30 days of such notification, the failure to cure shall constitute a material default in terms of this IGA and said Participating Jurisdiction shall be deemed excluded as a Participating Jurisdiction from the scope of this IGA and The Link shall be free to refuse the provision of services for any juvenile from that Participating Jurisdictions' geographical area.

VIII. TERM, RENEWAL AND TERMINATION OF AGREEMENT

- A. Term and Renewal of Agreement. The IGA shall be in full force and effect for a period of one calendar year commencing on January 1, 2015, and ending on December 31, 2015, and the Parties to this IGA shall have an option to renew this IGA for an additional one year, at the end of each such term, upon written notification to The Link of intent to renew, dated 90 days prior to the end of the current term.
- B. Termination by Written Notice. This IGA or any Party's participation in this IGA, may be terminated effective by written notice from the Party or Parties to The Link dated at least 90 days prior to January 1st of any given year. Any Party terminating its participation pursuant to this provision shall not be entitled to any reimbursement of its annual operating cost contributions previously paid to The Link.
- C. Termination of Party/Loss of Funds. Upon termination of a Party whether by default in performance or by written notice, the remaining Parties may continue to participate in this IGA. The Link's Board, upon such termination of Party or Parties, shall act to adjust the budget or Annual Assessment or hours of operation to accommodate the loss in funds unless the remaining Parties negotiate an amendment to the IGA setting forth revised percentages of participation or the Parties agree to terminate the IGA.

- D. Powers of The Link upon Termination by a Majority. Upon termination by mutual agreement of a majority of the Parties to this IGA, the powers granted to The Link under this IGA shall continue to the extent necessary to make an effective disposition of the property, equipment, and assets under this IGA.

IX. AMENDMENT

This IGA may be amended at any time in writing by agreement of the Parties to this IGA subject to approval of the various governing bodies of the Parties.

X. SEVERABILITY

If any article, section, paragraph, sentence, clause or phrase of this IGA is held to be unconstitutional or invalid for any reason, such holding shall not affect the validity, enforceability or constitutionality of the remaining provisions of this IGA.

XI. COUNTERPART

This IGA may be signed in counterparts, and each counterpart shall be deemed an original, and all counterparts taken as a whole shall constitute one and the same instrument. The IGA shall not be effective until the last date executed by all Parties.

XII. NO THIRD PARTY BENEFICIARIES

Nothing contained herein shall give rise to any rights or allow any claim by any third party. It is the express intention of the Parties that any third party receiving benefits from this IGA shall be deemed an incidental beneficiary only.

XIII. SUPERSEDES

This IGA supersedes and replaces all prior agreements and all amendments,

XIV. NON-DISCRIMINATORY POLICY

The Link shall make its services, facilities, and programs available to all persons regardless of race, color, age, creed, national origin, sex, or disability.

XV. NO GENERAL OBLIGATION INDEBTEDNESS

As this IGA will extend beyond the current fiscal year, the Parties understand and intend that the obligation of the Parties to pay the Annual Assessment hereunder constitutes a current expense of the Parties payable exclusively from the Parties' funds and appropriated each fiscal year, and shall not in any way be construed to be a multi-fiscal year debt or other financial obligation within the meaning of Article X, Section 20, of the Colorado Constitution, a general obligation indebtedness of the Parties within the

meaning of any provision of Article XI, of the Colorado Constitution, or any other constitutional or statutory indebtedness. None of the Parties has pledged the full faith and credit of the state, or the Parties to the payment of the charges hereunder, and this IGA shall not directly or contingently obligate the Parties to apply money from, or levy or pledge any form of taxation to, the payment of the annual operating costs.

XVI. LITIGATION

Each Party hereto shall be responsible for any suits, demands, costs or actions at law resulting from its own acts or omissions.

XVII. WAIVER

A waiver by any Party of a breach of any term or provision of this IGA shall not operate or be construed as a waiver of any subsequent breach by either Party.

XVIII. PARAGRAPH CAPTIONS

The captions of the paragraphs are set forth only for the convenience and reference of the Cities and are not intended in any way to define, limit or describe the scope or intent of this IGA.

XIX. GOVERNMENTAL IMMUNITY

The Cities and County acknowledge that each Party, their officers and employees, are relying on, and do not waive or intend to waive, by any provision of this IGA, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq., as it is from time to time amended, or otherwise available to the Cities, their officers, or employees.

IN WITNESS WHEREOF, the Parties hereto have executed this IGA to become effective upon final execution by all Parties.

CITY OF THORNTON

Jack Ethredge, City Manager Date

ATTEST:

Nancy A. Vincent, City Clerk

APPROVED AS TO FORM:

Margaret Emerich, City Attorney

CITY OF WESTMINSTER

By: Nancy McNally Date
Title: Mayor

ATTEST:

By: Linda Yeager
Title: City Clerk

APPROVED AS TO FORM:

By: Marty McCullough
Title: City Attorney

CITY OF BRIGHTON

By: Richard N. McLean Date
Title: Mayor

ATTEST:

By: Natalie Hoel
Title: City Clerk

APPROVED AS TO FORM:

By: Margaret Brubaker
Title: City Attorney

CITY OF COMMERCE CITY

By: Sean Ford
Title: Mayor

Date

ATTEST:

By: Laura J. Bock
Title: City Clerk

APPROVED AS TO FORM:

By: Robert R. Gehler
Title: City Attorney

CITY OF NORTHGLENN

By: Kathleen M. Novak Date
Title: Mayor

ATTEST:

By: Diana L. Lentz
Title: City Clerk

APPROVED AS TO FORM:

By: Corey Y. Hoffman
Title: City Attorney

ADAMS COUNTY, COLORADO

By: Date
Title: Eva Henry, Chairperson

ATTEST:

By: Karen Long
Title: County Clerk

APPROVED AS TO FORM:

By: Hal Warren
Title: County Attorney

THE LINK
A Community Assessment and
Resource Center

A Colorado Non-Profit Corporation

BY: Valorie A. Ladwig Date
Title: Executive Director

EXHIBIT A

RECEIVING AT-RISK YOUTH BY LAW ENFORCEMENT AGENCY 2015 IGA Contributions

YEAR	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013	Grand Total	6 Yr Total	6 Yr. Agency Average	% of Link Usage	2014 IGA Contribution	% of Link Usage	2015 IGA Contribution
																		2012	\$453,376	2013	\$498,713
AGENCY																				10%	Increase
ACSO	58	161	195	223	176	117	90	97	89	95	98	88	82	90	1,659	542	90	21%	\$98,154	20%	\$99,744
Brighton	50	87	61	83	55	33	34	40	40	56	56	45	70	72	782	339	56	10%	\$46,740	11%	\$54,858
Comm. City	28	86	98	134	99	89	54	43	47	46	38	30	22	36	850	219	37	9%	\$42,065	9%	\$44,884
Northglenn	42	80	94	64	65	64	62	64	45	42	44	38	29	36	769	234	39	10%	\$46,740	9%	\$44,884
Thornton	153	303	375	284	324	220	175	177	170	150	164	139	178	275	3,087	1,076	179	37%	\$172,937	40%	\$199,485
Westminster	28	86	80	61	81	80	44	42	42	54	50	46	54	58	806	304	51	10%	\$46,740	11%	\$54,858
TOTAL	359	803	903	849	800	593	459	463	433	443	450	386	435	567	7,953	2,714	439		\$453,376		\$498,713
Scheduled Interventions/Self Referrals as a result of law enforcement contact								35	45	47	66	37	30	48	230		n/a				

Schedule: Mon.- Sat. 8 am-12am After hours on-call
Employees: 12 FTE 2 PTE

EXHIBIT A



Staff Report

File #: ID-263-14, **Version:** 1

Department of Finance

Reference: 2015-2016 Community Development Block Grant Funding

To: Mayor Richard N. McLean and Members of City Council

Through: Manuel Esquibel, City Manager

Prepared By: Dan Frelund, Finance Director

Date Prepared: November 18, 2014

PURPOSE:

Requesting City Council approval of a resolution supporting the application of Community Development Block Grant funds for the 2015-2016 grant entitlement year, and authorizing the City Manager to sign the Award Agreement on behalf of the City.

BACKGROUND/HISTORY:

The City, through Adams County, receives funding from the U.S. Department of H.U.D. to assist low to moderate income families and neighborhoods within the city of Brighton. The grant period runs from March 1, 2015 through February 28, 2016.

In the past, the City has been allocated between \$131,000 and \$184,000 in grant funds per year to be use for low to moderate income assistance. Submittals have been received from Almost Home in the amount of \$75,000 for an HVAC system for their Community Center, and the City in the amount of \$75,000, to continue the handicap ramp and sidewalk upgrades to comply with ADA standards. All of these projects are located in the low to moderate income Census Tracts that CDBG funds qualify for. Usually, if the City is awarded more, or less than estimated, the difference is added to or subtracted from the City's project.

The Grant Applications are due to Adams County by November 25, 2014.

CITY OF BRIGHTON
A RESOLUTION APPROVING THE ALLOCATION OF
COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS FOR THE
CITY OF BRIGHTON, COLORADO FOR THE FISCAL YEAR 2015;
AND AUTHORIZING THE CITY MANAGER TO SIGN AND
EXECUTE THE GRANT AGREEMENT ON BEHALF OF THE
CITY.

Resolution No. _____

WHEREAS, the City of Brighton is a subgrantee of the Adams County entitlement program through the Department of Housing and Urban Development for Title 1 of the Housing and Community Development Act of 1974 as amended; and

WHEREAS, the City of Brighton will receive a proportionate amount of Community Development Block Grant funds as part of Adams County's entitlement program in the approximate amount of \$150,000 for grant year 2015-2016; and

WHEREAS, the City received two applications for the use of CDBG funds that meets federal guidelines to assist low and moderate income individuals and families; and

WHEREAS, City Staff has reviewed the applications.

NOW, THEREFORE, be it resolved by the City Council of the City of Brighton as follows:

1. That the following applications in the following amounts be approved for CDBG funding for fiscal year 2015:

City ADA Sidewalk Accessibility project	\$ 75,000
Almost Home HVAC system project	<u>75,000</u>
	\$ 150,000
2. The City Council of the City of Brighton hereby authorizes the City Manager to sign and execute the Grant Agreements and to undertake such tasks and execute such documents as may be required to implement said Grant Agreements.
3. That if the City of Brighton is awarded more than \$150,000, or less than \$150,000, the difference will be added or subtracted from the City ADA Sidewalk Accessibility project.

ADOPTED this 18th day of November, 2014.

CITY OF BRIGHTON, COLORADO

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Margaret R. Brubaker, City Attorney



Staff Report

File #: ID-267-14, **Version:** 1

Department of Utilities

Reference: 2015 Proposed Utility Rates

To: Mayor Richard N. McLean and Members of City Council

Through: Manuel Esquibel, City Manager

Prepared By: Curtis Bauers, P.E., Director of Utilities
Sarah Borgers, P.E., Assistant Director of Utilities

Date Prepared: November 10, 2014

PURPOSE

To modify the 2014 Utilities rates based on Willdan Financial Services cost-of-service analysis and rate study analysis in conjunction with the Utilities Cash Flow Model previously presented and direction provided by Council following the Study Session on 2015 Proposed Utility Rates.

BACKGROUND

The Utilities Department has completed an intensive cost of service and rate study analysis through consultation with Willdan Financial Services. The analysis included a thorough review of current and future operational and capital expenditures required to operate City utilities in a conscientious and sustainable manner.

The result of this study showed the need for a 2015 revenue increase of 8% in the water fund, 4% in the wastewater fund, and by \$0.64 per customer bill for stormwater fees over the average revenues generated from 2011-2013. Services are also required by statute to be based on "cost of service". This means that each customer class (such as residential, commercial, or irrigation users) should be charged fairly and equitably based on how much it costs to provide those services.

The majority of Residential water customers will see a slight decrease in their bills, and commercial customer rates will not be changed substantially either. Multi-family customers will see increases between 6-9% depending on their usage. Irrigation-only and bulk rate users that will see the biggest change in their bills, based on the need to more closely reflect cost-of-service in their rates. This may also help in water conservation management since irrigation is by far the biggest impact on the water system, pushing summertime consumption up more than four and half times higher than wintertime usage system-wide.

In order to more equitably charge residential customers, the proposed rate structure does not include a senior citizen discount any longer. Instead, it includes a 'life line' rate. The life line rate is a reduced rate that is applied to the first 3,000 gallons of water consumption for all residential users. This allows customers to purchase water for essential needs such as bathing and washing clothes at a reduced rate - irrespective of their age - during times of financial stress.

The 'Schools' rate is no longer separated as a unique customer class. Although there are certainly criteria that suggest it

is a separate class, there are not enough schools in our system to equitable represent cost-of-service and forcing a distinct rate for schools would be somewhat artificial. Therefore, it is proposed that schools be treated as either commercial-indoor, commercial-dual, or commercial-irrigation depending on the meter placement, just as commercial and industrial entities be treated. This concept has been presented to the School District.

The existing rate structure is overly complicated, particularly when it comes to commercial rates, and does not really function as it was apparently designed to do. Currently, over 90% of the bills fall into the single rate tier of 0-25,000 gallons. Therefore, the proposed water rate structure for 2015 is significantly simplified.

The proposed 2015 water rates are as follows:

Draft City of Brighton 2015 Water Rates

Meter Size (inches)	Monthly Water Fixed Charge	Class	Block	Block Threshold (kgals)	\$/1,000
3/4	\$14.00	Single Family	1	0 - 3	\$2.65
1	\$23.25		2	4 - 15	4.46
1.5	\$46.50		3	16 -25	4.80
2	\$74.40		4	25 - 40	5.20
3	\$139.50		5	> 40	6.05
4	\$232.50	Multifamily	1	0-40	\$4.90
6	\$465.00		2	>40	\$6.05
		Commercial Uniform		> 0	\$4.60
		Commercial -Uniform		> 0	\$5.95
		Commercial -Uniform		> 0	\$8.10
		Bulk - hydrar	Uniform	> 0	\$8.10

Fewer changes are suggested to the wastewater rate schedules, which will be highlighted in the presentation. In general, the wastewater rates will increase by approximately 4%. Similarly, stormwater fees will simply increase from \$2.12 to \$2.76 per month for Single Family Residential customers.

CRITERIA BY WHICH COUNCIL MUST CONSIDER THE ITEM

FINANCIAL IMPACT

Approval of this Ordinance to modify the rate structures will provide the necessary revenue increases to meet the needs of the water, wastewater, and stormwater systems. It will have negligible effects on most residential and commercial users. A majority of residential customers will actually see a slight decrease in their bill. There will be a small increase for customers who have been receiving the senior citizen discount; however, that policy did not comply with cost of service standards and others were subsidizing those customers. The current proposed 'lifeline rate' allows all residential customers to significantly reduce their bill, by lowering water usage to less than 3,000 gallons, during times of financial stress. Irrigation and bulk water users will see the largest increase in their bills.

STAFF RECOMMENDATION

Willdan Financial Services and City staff have been through intensive analysis on necessary expenditures, revenue requirements, and equitable rate structure design. Based on this analysis and review, staff recommends the approval of the proposed 2015 utility rate structures.

OPTIONS FOR COUNCIL CONSIDERATION

1. Approve the Ordinance adopting the proposed 2015 Utility Rates and PIFs
2. Deny the Ordinance to modify the 2014 Utility Rates and PIFs, leaving them unchanged.
3. Change the Ordinance the modify the 2014 Utility Rates and PIFs as Council sees fit

ATTACHMENTS

2014 Utility Rates Ordinance

2015 Proposed Utility Rates and PIFs Ordinance

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AMENDING TITLE 13 OF THE BRIGHTON MUNICIPAL CODE PERTAINING TO WATER, WASTEWATER AND STORM DRAINAGE FEES AND CHARGES ASSESSED BY THE CITY OF BRIGHTON; SETTING FORTH EFFECTIVE DATES FOR SAID RATES, FEES AND CHARGES; AND, OTHER DETAILS RELATED THERETO.

ORDINANCE NO. _____

INTRODUCED BY: _____

WHEREAS, authority is granted by the Charter to the governing body of the City of Brighton, Colorado, to assess fees and charges for services provided by the City; and

WHEREAS, the Utilities Department has completed an intensive cost of service and rate study analysis through consultation with Willdan Financial Services; and

WHEREAS, the analysis included a thorough review of current and future operational and capital expenditures required to operate City utilities in a conscientious and sustainable manner; and

WHEREAS, the result of this study showed the need for a 2015 revenue increase of 8% in the water fund, 4% in the wastewater fund, and by \$0.64 per customer bill for stormwater fees over the average revenues generated from 2011-2013; and

WHEREAS, the fees and charges set forth herein are consistent with the recommendations from the Willdan Study and are necessary to offset the City's costs of service for the provision of water, wastewater and storm drainage services; and

WHEREAS, the rates, fees, and charges adopted herein shall become effective on the dates specified herein.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO AS FOLLOWS:

Section 1. Section 13-4-90 of the Brighton Municipal Code are hereby amended to read as follows:

Sec. 13-4-90. Water plant investment fee schedule.

(a) Whenever a person, firm or corporation makes application for a permit to use City water for property located within the City limits, a water plant investment fee (PIF) shall be charged to the applicant in accordance with a schedule of fees to be set by ordinance duly adopted by the City Council after review of such fee schedule as the City Council from time to time deems necessary.

(b) Water tap fees for previously accepted mains: The City will make all taps up to two-inch

connections. Taps larger than two (2) inches will be made by the contractor under City supervision. The contractor will supply all materials, except curb stops, needed for all sizes of taps and make the excavation to the City water main. If a meter pit or vault is required, the contractor will install the meter pit or vault according to City specifications. The fees for all City-made taps will be as follows:

<i>Tap Size</i>	<i>Fee</i>
Three-quarter-inch connection	\$66
One-inch connection	\$75
One-and-one-half-inch connection	\$138
Two-inch connection	\$154

(c) Water meter pits or vaults are to be provided and installed by the contractor.

(d) Water meters are required on all water taps and must be purchase with the building permit. The City installs all three-quarter-inch and one-inch meters. There is no charge for installation. The charge for individual meters purchased from the City shall be as follows:

<i>Meter</i>	<i>Charge</i>
Three-quarter-inch meter	\$118.00
One-inch meter	140.00
One-and-one-half-inch meter	263.00
Two-inch meter	348.00
Three-inch meter	605.00
Four-inch meter	977.00
Over four-inch connection shall be paid by applicant; the rate shall be determined by the City.	

(e) The water plant investment fees shall be as follows:

(1) Single-family detached; mixed-use; commercial; industrial; and other uses not specifically delineated herein:

a. Three-quarter-inch meter:

With water rights	\$ 9,790
Without water rights	18,633

b. One-inch meter:

With water rights	\$16,317
Without water rights	31,055

c. One-and-one-half-inch meter:

With water rights	\$32,633
Without water rights	62,110

d. Two-inch meter:

With water rights	\$52,213
Without water rights	99,376

e. Three-inch meter:

With water rights	\$97,900
Without water rights	186,330

f. Four-inch meter:

With water rights	\$163, 167
Without water rights	310,550

(2) Multi-family dwellings, including apartment buildings or condominiums; single-family attached (such as duplexes or townhouses); and single-family detached with carriage unit.¹

a. With water rights:

First living unit	\$9,790
Each additional unit within building*	5,874

b. Without water rights:

First living unit	\$18,633
Each additional unit within building*	10,900

1 Carriage unit that is detached from the main structure will pay the fee for each additional unit. If the carriage unit is restricted to prohibit rental of the unit separate from the main structure, fees as detailed in Paragraph (1) shall apply.

(3) Mobile home parks – per user unit.

With water rights	\$ 9,790.00
Without water rights	18,633

(4) A water resource fee of nineteen thousand dollars (\$19,000.00) per acre-foot is required for public land donations when the development is paying the water plant investment fees under the "without water rights" schedule. The requirement will be calculated according to the then- applicable "water dedication worksheets" prepared by the Department of Public Works. The developer will make all taps in new construction and shall pay a fifty-dollar inspection fee for each tap. If the inspection reveals deficiencies in the installation of a new water meter by the water user or a plumber, the inspector shall provide to the water user a written notice of those deficiencies. If the Water Department has to return to a site for an installation inspection more than two (2) times after the written notice of deficiencies, the water user shall pay seventy-five dollars (\$75.00) for each additional inspection until the deficiencies are cured.

(5) For any connection greater than two (2) inches and for all industrial users, the owner shall provide to the City an acceptable water resource report authored by a registered professional engineer experienced in water resources in addition to payment of the water plant investment fee.

(f) Water tap fees, previously accepted mains: The City will make all taps up to two-inch connections. Taps larger than two (2) inches will be made by the contractor under City supervision. The contractor will supply all materials, except curb stops, needed for all sizes of taps and make the excavation to the City water main. If a meter pit or vault is required, the contractor will install the meter pit or vault according to City specifications. The fees for all City-made taps will be as follows:

<i>Tap Size</i>	<i>Fee</i>
Three-quarter-inch	\$ 66.00
One-inch connection	75.00
One-and-one-half-inch connection	138.00
Two-inch connection	154.00

(g) Water meter pits or vaults are to be provided and installed by the contractor.

(h) Water meters are required on all water taps and must be purchased with the building permit. The City installs all three-quarter-inch and one-inch meters. There is no charge for installation. The charge for individual meters purchased from the City shall be based on the current cost for the City to purchase said meter

(i) No connection to the City waterworks system shall be made unless all charges and assessments therefor are paid in full in advance of the connection.

Section 2. Section 1 of Ordinance No. 2167 and Section 13-4-130 of the Brighton Municipal Code are hereby amended to read as follows:

13-4-130. Charges – Monthly Water Service – Schedule. All water rate charges for use of water in the City shall be assessed pursuant to a schedule of fees to be set by ordinance duly adopted by City Council after review of such fee schedule as the City Council from time to time deems necessary. The following shall be the schedule of monthly water service rates for the use of water in the City on a metered rate basis.

(a) **Residential Monthly Fixed Charge** Effective with all utility bills dated after January 1, 2015, a monthly fixed charge of **\$14.00** shall be billed to all water accounts whether there is water usage, or not.

(b) **Residential, and Residential Irrigation Volume-Based Water Rates Monthly Charge Per 1,000 Gallons of Usage.** Effective with all utility bills dated after January 1, 2015, the following monthly volume-based charge will be added to the monthly fixed charge as stated in subsection (a) above. The monthly volume-based water rates shall be as follows:

- (1) The monthly volume-based water rates shall be as follows for all water usage from zero (0) gallons up to and including three thousand (3,000) gallons:
 - a. Residential \$2.65
 - b. Irrigation – Residential Only \$2.65
- (2) The monthly volume-based water rates shall be as follows for all water usage from three thousand (3,000) gallons up to and including fifteen thousand (15,000) gallons:
 - a. Residential \$4.46
 - b. Irrigation – Residential Only \$4.46
- (3) The monthly volume-based water rates shall be as follows for all water usage from fifteen thousand (15,000) gallons up to and including twenty-five thousand (25,000) gallons:
 - a. Residential \$4.80
 - b. Irrigation – Residential Only \$4.80
- (4) The monthly volume-based water rates shall be as follows for all water usage from twenty-five thousand (25,000) gallons up to and including forty thousand (40,000) gallons:
 - a. Residential \$5.20
 - b. Irrigation – Residential Only \$5.20
- (5) The monthly volume-based water rates shall be as follows for all water usage over forty thousand (40,000) gallons:
 - a. Residential \$6.05
 - b. Irrigation – Residential Only \$6.05

(c) **Budget Billing.** Any homeowner in the City who has timely paid their water bill for the prior twelve months, may be eligible for budget billing, as defined herein. Homeowners may apply for budget billing on forms provided by the City. New homeowners may apply for

budget billing based upon previous annual average consumption at that address. Each year, in March, the next year's budget billing amount shall be computed; any underpayment shall be billed to the homeowner; any over-payment shall be credited to the homeowner.

(d) Multi-family Residential Volume-Based Water Rates Monthly Charge Per 1,000 Gallons of Usage. Effective with all utility bills dated after January 1, 2015, the following monthly volume-based charge will be added to the monthly fixed charge as stated in subsection (a) above. The monthly volume-based water rates shall be as follows:

- (1) The monthly volume-based water rates shall be as follows for all water usage from zero (0) gallons up to and including forty thousand (40,000) gallons:
 - a. Multi-family Residential Indoor Use \$4.90
 - b. Irrigation – Multi-family Residential Only \$4.90
- (2) The monthly volume-based water rates shall be as follows for all water usage over forty thousand (40,000) gallons:
 - a. Multi-family Residential Indoor Use \$6.05
 - b. Irrigation – Multi-family Residential Only \$8.10

(e) Commercial, Municipal Potable, Irrigation, Non-Potable Irrigation, Industrial, Mixed Use, Private Fire, Bulk and Schools Monthly Fixed Charge By Meter Size. Effective January 1, 2015, the following monthly fixed charge shall be billed to all water accounts whether there is water usage, or not:

- (1) Three-fourths-inch meter \$14.00
- (2) One-inch meter \$ 23.25
- (3) One and one-half-inch meter \$46.50
- (4) Two-inch meter \$74.40
- (5) Three-inch meter \$139.50
- (6) Four-inch meter \$232.50
- (7) Six-inch meter \$465.00

(f) Commercial, Industrial, Mixed Use, Municipal Potable, Schools, Private Fire, Bulk and Non-Potable Irrigation Volume-Based Water Rates Monthly Charge Per 1,000 Gallons of Usage. Effective January 1, 2015, the following monthly volume-based charge will be added to the monthly fixed charge as stated in subsection (e) above.

- (1) The monthly volume-based water rates shall be as follows:
 - a. Commercial, Industrial, Mixed Use - Indoor Uses \$4.60
 - b. Commercial, Industrial, Mixed Use -
Indoor & Outdoor Combined Uses \$5.95
 - c. Commercial, Industrial, Mixed Use - Outdoor Irrigation Uses \$8.10
 - c. Private fire (there is no charge for water
for fire protection purposes) \$0.00
 - d. Bulk \$8.10
 - e. Non-potable irrigation \$3.00

Section 3. Section 13-16-25 of the Brighton Municipal Code are hereby amended to read as follows:

Sec. 13-16-25. Wastewater plant investment fees and connection charges; schedule.

(a) A wastewater plant investment fee (PIF) for City collection system infrastructure shall be paid for each separate tap to any sanitary sewer line within the City. The amount of the fee shall be based on the size of the water service line. The wastewater plant investment fees shall be as follows:

(1) Single-family detached; mixed-use; commercial; industrial; and other uses not specifically delineated herein:

<i>Tap Size</i>	<i>Fee</i>
Three-quarter-inch tap	\$2,000
One-inch tap	3,400
One-and-one-half-inch	6,600
Two-inch tap	10,600
Three-inch tap	21,400
Four-inch tap	36,400

(2) Multi-family dwellings, including apartment buildings or condominiums; single-family attached (such as duplexes or townhouses); and single-family detached with carriage unit *:

First living unit	\$2,000
Each additional unit within building *	1,300

(3) Mobile home parks – per user unit: two thousand dollars (\$2,000).

(4) For any connection greater than two (2) inches, the owner shall provide the City with an acceptable wastewater impact report authorized by a registered professional engineer experienced in wastewater services in addition to payment of the wastewater plant investment fee.

* Carriage unit that is detached from the main structure will pay the fee for each additional unit. If the carriage unit is restricted to prohibit rental of the unit separate from the main structure, fees as detailed in Paragraph (1) above, shall apply.

(5) The developer will make all taps in new developments. A fifty-dollar inspection fee will be charged for each tap to an existing line.

(6) No new service lines will be provided outside the corporate limits of the City.

(b) An additional wastewater plant investment fee shall be paid for the treatment component associated with each separate tap to any sanitary sewer line within the South Platte Basin of the City. The amount of the fee shall be based on the size of the water service line and shall be based on the current charges assessed by Metro.

(c) An additional wastewater plant investment fee shall be paid for the treatment component associated with each separate tap to any sanitary sewer connection within the South Beebe Draw Basin of the City. The amount of the fee shall be based on the size of the water service line and shall be based on the current charges assessed by the City of Lochbuie.

Section 4. Section 2 of Ordinance No. 2167 and Section 13-16-70 of the Brighton Municipal Code are hereby amended to read as follows:

13-16-70 Wastewater Service Charges – Rates – Notification.

- (a) **Wastewater Service Charge.** All wastewater service charges for processing of wastewater in the City shall be assessed pursuant to a schedule of fees to be set by ordinance duly adopted by City Council after review of such fee schedule as the City Council from time to time deems necessary.

Every user of the City wastewater system will be charged the monthly wastewater service charge whether matter is discharged into the system, or not. This service charge will be added to either the flat wastewater rates as calculated pursuant to either subsection (b) or subsection (c) hereof, as applicable.

- (b) Effective January 1, 2015, the following shall be the schedule of monthly wastewater service rates for the processing of wastewater in the City:

Residential Monthly Fixed Charge. The following monthly fixed charge shall be billed to all residential wastewater accounts whether there is wastewater usage, or not:

\$9.55

Commercial, Industrial, Mixed Use, and Schools Monthly Fixed Charge By Meter Size. The following monthly fixed charge shall be billed to all Commercial, industrial, mixed use, school wastewater accounts whether there is wastewater usage, or not:

(1) Three-fourths-inch meter	\$18.10
(2) One-inch meter	\$42.85
(3) One and one-half-inch meter	\$105.00
(4) Two-inch meter	\$190.30
(5) Three-inch meter	\$399.70
(6) Four-inch meter	\$723.20

(7) Six-inch meter

\$1,950.80

(c) Flat Wastewater Rate – Metered Water Usage. Effective January 1, 2015, all users of the wastewater system who are metered for water usage will be billed a flat wastewater rate each month, based on the average water usage as reflected in the prior December, January and February water bills. This flat wastewater rate may be changed annually, and will vary in amount, based on classification. Monthly volume-based rates per 1,000 gallons of water usage are as follows:

(1) Residential	\$4.40
(2) Commercial	\$5.40
(3) Municipal	\$4.40

(d) Flat Wastewater Rate – Non-Metered Water Usage. Effective January 1, 2015, those users of the wastewater system who are not metered for water usage will be billed a flat wastewater rate each month. The flat wastewater rates will vary in amount, based on classification. The monthly flat wastewater rates for non-users metered water are as follows:

(1) Residential	\$23.45
(2) Multi-family	Number of dwelling units x \$23.45
(3) Commercial (discharging restrooms only)	\$23.90
(4) Commercial (discharging other than restrooms)	\$47.75

(e) Commercial Property – Rated Based on Actual Water Usage. Effective January 1, 2015 any owner of commercial property in the City which receives City wastewater service may request to be billed a wastewater rate based on actual water usage each month. Such request shall be made annually on forms provided by the City. The effective date for such billing shall be the first full monthly billing after such written request is approved. Monthly volume-based rates per 1,000 gallons of water usage for approved commercial users shall be as follows:

Commercial	\$5.40
------------	--------

Section 5. Storm Drainage Management Utility. Section 3 of Ordinance No. 2167, and Section 13-20-81 of the Brighton Municipal Code are hereby amended to read as follows:

13-20-81 Storm Drainage Maintenance Fee – Rates .

- (a) The storm drainage maintenance fee shall be used solely for administration, engineering, professional services, design, installation, repair, maintenance, operation, management, improvement, of storm drainage facilities in the City necessary for the Utility to reasonably manage storm drainage in the City.
- (b) All storm drainage maintenance fee charges shall be assessed pursuant to a schedule of fees to be set by ordinance duly adopted by the City Council after review of such fee schedule as the City Council from time to time deems necessary. The following shall be the schedule of monthly storm drainage maintenance fees.

Monthly Fixed Charges. Effective January 1, 2015, the following monthly fixed charges shall be billed to all water or sewer accounts whether there is water usage, or not:

Single-family residence	\$2.76
Multi-family residence	\$3.52
Nonresidential, commercial, mixed-use, schools, industrial, and all other uses	\$7.85

INTRODUCED, PASSED ON FIRST READING AND ORDERED PUBLISHED this 18th day of November, 2014.

CITY OF BRIGHTON, COLORADO

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Margaret R. Brubaker, City Attorney

Published in the *Brighton Blade*
First Publication: November 26, 2014

INTRODUCED, PASSED ON SECOND READING AND ORDERED PUBLISHED BY TITLE ONLY this 2nd day of December, 2014.

CITY OF BRIGHTON, COLORADO

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

Published in the *Brighton Blade*
Final Publication: December 10, 2014

CHAPTER 13
Water and Sewer
Selected Sections

Sec. 13-4-90. Water plant investment fee schedule.

(a) Whenever a person, firm or corporation makes application for a permit to use City water for property located within the City limits, a water plant investment fee shall be charged to the applicant in accordance with a schedule of fees to be set by ordinance duly adopted by the City Council after review of such fee schedule as the City Council from time to time deems necessary.

(b) Water tap fees for previously accepted mains: The City will make all taps up to two-inch connections. Taps larger than two (2) inches will be made by the contractor under City supervision. The contractor will supply all materials, except curb stops, needed for all sizes of taps and make the excavation to the City water main. If a meter pit or vault is required, the contractor will install the meter pit or vault according to City specifications. The fees for all City-made taps will be as follows:

<i>Tap Size</i>	<i>Fee</i>
Three-quarter-inch connection	\$ 66.00
One-inch connection	75.00
One-and-one-half-inch connection	138.00
Two-inch connection	154.00

(c) Water meter pits or vaults are to be provided and installed by the contractor.

(d) Water meters are required on all water taps and must be purchase with the building permit. The City installs all three-quarter-inch and one-inch meters. There is no charge for installation. The charge for individual meters purchased from the City shall be as follows:

<i>Meter</i>	<i>Charge</i>
Three-quarter-inch meter	\$118.00
One-inch meter	140.00
One-and-one-half-inch meter	263.00
Two-inch meter	348.00
Three-inch meter	605.00
Four-inch meter	977.00
Over four-inch connection shall be paid by applicant; the rate shall be determined by the City.	

(e) The water plant investment fees shall be as follows:

(1) Single-family detached; mixed-use; commercial; industrial; and other uses not specifically delineated herein:

a. Three-quarter-inch meter:

With water rights	\$ 8,400.00
Without water rights	14,000.00

b. One-inch meter:

With water rights	\$14,502.00
Without water rights	23,354.00

c. One-and-one-half-inch meter:

With water rights	\$29,002.00
Without water rights	46,708.00

d. Two-inch meter:

With water rights	\$46,404.00
Without water rights	74,734.00

e. Three-inch meter:

With water rights	\$ 92,808.00
Without water rights	149,468.00

f. Four-inch meter:

With water rights	\$159,514.00
Without water rights	256,898.00

(2) Multi-family dwellings, including apartment buildings or condominiums; single-family attached (such as duplexes or townhouses); and single-family detached with carriage unit.¹

a. With water rights:

¹ Carriage unit that is detached from the main structure will pay the fee for additional unit. If the carriage unit is restricted to prohibit rental of the unit separate from the main structure, fees as detailed in Paragraph (1) shall apply.

First living unit	\$8,700.00
Each additional unit within building*	3,862.00

b. Without water rights:

First living unit	\$14,000.00
Each additional unit within building*	6, 215.00

(3) Mobile home parks . per user unit.

With water rights	\$ 8,700.00
Without water rights	14,000.00

(4) A water resource fee of seventeen thousand dollars (\$17,000.00) per acre-foot is required for public land donations when the development is paying the water plant investment fees under the "without water rights" schedule. The requirement will be calculated according to the then- applicable "water dedication worksheets" prepared by the Department of Public Works. The developer will make all taps in new construction and shall pay a twenty-five-dollar inspection fee for each tap. If the inspection reveals deficiencies in the installation of a new water meter by the water user or a plumber, the inspector shall provide to the water user a written notice of those deficiencies. If the Water Department has to return to a site for an installation inspection more than two (2) times after the written notice of deficiencies, the water user shall pay fifty dollars (\$50.00) for each additional inspection until the deficiencies are cured.

(5) For any connection greater than two (2) inches and for all industrial users, the owner shall provide to the City an acceptable water resource report authored by a registered professional engineer experienced in water resources in addition to payment of the water plant investment fee.

(f) Water tap fees, previously accepted mains: The City will make all taps up to two-inch connections. Taps larger than two (2) inches will be made by the contractor under City supervision. The contractor will supply all materials, except curb stops, needed for all sizes of taps and make the excavation to the City water main. If a meter pit or vault is required, the contractor will install the meter pit or vault according to City specifications. The fees for all City-made taps will be as follows:

<i>Tap Size</i>	<i>Fee</i>
Three-quarter-inch connection	\$ 66.00
One-inch connection	75.00
One-and-one-half-inch connection	138.00
Two-inch connection	154.00

(g) Water meter pits or vaults are to be provided and installed by the contractor.

(h) Water meters are required on all water taps and must be purchased with the building permit. The City installs all three-quarter-inch and one-inch meters. There is no charge for installation. The charge for individual meters purchased from the City shall be as follows:

<i>Meter Size</i>	<i>Charge</i>
Three-quarter-inch meter	\$118.00
One-inch meter	140.00
One-and-one-half-inch meter	263.00
Two-inch meter	348.00
Three-inch meter	605.00
Four-inch meter	977.00
Over four-inch connection shall be paid by application; the rate shall be determined by the City.	

(i) No connection to the City waterworks system shall be made unless all charges and assessments therefor are paid in full in advance of the connection. (Ord. 1964 § 14, 2008)

Sec. 13-4-95. Dual system fees.

Nonpotable water systems which have been approved by the City for the provision of nonpotable water for irrigation within the corporate limits of the City shall be eligible for a reduction in the water plant investment fees. The amount of said reduction shall be determined according to an analysis conducted by the Department of Public Works which takes into consideration the land use for which the nonpotable system will be implemented, the area to be irrigated by the nonpotable system, the source of water for the nonpotable system, the capacity and capability of the nonpotable system, the extent to which the nonpotable system is independently and privately owned and operated, the operational and maintenance requirements for the nonpotable system and such other factors and considerations as the Department of Public Works deems appropriate and necessary for its analysis. (Ord. 1902 §2, 2006)

Sec. 13-4-130. Charges; monthly water service; schedule.

All water rate charges for use of water in the City shall be assessed pursuant to a schedule of fees to be set by ordinance duly adopted by the City Council after review of such fee schedule as the City

Council from time to time deems necessary. The following shall be a schedule of monthly water service rates for the use of water in the City on a metered rate basis.

(1) Residential monthly fixed charge. Effective with all utility bills dated after January 1, 2014, a monthly fixed charge of twelve dollars and ninety-eight cents (\$12.98) shall be billed to all water accounts, whether there is water usage or not.

(2) Residential and residential irrigation volume-based water rates monthly charge per one thousand (1,000) gallons of usage. Effective with all utility bills dated after January 1, 2014, the following monthly volume-based charge will be added to the monthly fixed charge as stated in Paragraph (1) above. The monthly volume-based water rates shall be as follows:

a. The monthly volume-based water rates shall be as follows for all water usage from zero (0) gallons up to and including twenty-five thousand (25,000) gallons:

Residential	\$4.46
Irrigation - residential only	4.46

b. The monthly volume-based water rates shall be as follows for all water usage from twenty-six thousand (26,000) gallons up to and including thirty thousand (30,000) gallons:

Residential	\$4.91
Irrigation - residential only	4.91

c. The monthly volume-based water rates shall be as follows for all water usage from thirty-one thousand (31,000) gallons up to and including thirty-five thousand (35,000) gallons:

Residential	\$5.15
Irrigation - residential only	5.15

d. The monthly volume-based water rates shall be as follows for all water usage from thirty-six thousand (36,000) gallons up to and including forty thousand (40,000) gallons:

Residential	\$5.59
Irrigation - residential only	5.59

e. The monthly volume-based water rates shall be as follows for all water usage over forty thousand (40,000) gallons:

Residential	\$6.05
Irrigation - residential only	6.05

(3) Residential senior citizen and permanently disabled discount. Any resident of the City over the age of sixty (60) years or any permanently disabled resident of the City may apply for a discount on his or her water bill. To be eligible, the applicant must certify on forms provided by the City that the water account is for his or her principal residence and he or she is either over sixty (60) years of age or permanently disabled. Any applicant who provides false or misleading information on the forms is subject to a one-hundred-dollar penalty that shall be assessed against his or her utility account. Effective with all utility bills dated after January 1, 2014, for the existing senior citizens and permanently disabled utility accounts, the monthly fixed water charge shall be twelve dollars and ninety-eight cents (\$12.98). Effective with all utility bills dated after January 1, 2014, a volume-based monthly rate of one dollar and sixty-one cents (\$1.61) per one thousand (1,000) gallons of usage for the first three thousand (3,000) gallons of usage, then four dollars and forty-six cents (\$4.46) per one thousand (1,000) gallons of usage up to and including twenty-five thousand (25,000) gallons, then four dollars and ninety-one cents (\$4.91) per one thousand (1,000) gallons of usage for twenty-six thousand (26,000) gallons up to and including thirty thousand (30,000) gallons, then five dollars and fifteen cents (\$5.15) per one thousand (1,000) gallons of usage for thirty-one thousand (31,000) gallons up to and including thirty-five thousand (35,000) gallons, then five dollars and fifty-nine cents (\$5.59) per one thousand (1,000) gallons of usage for thirty-six thousand (36,000) gallons up to and including forty thousand (40,000) gallons, then six dollars and five cents (\$6.05) per one thousand (1,000) gallons of usage for all usage over forty thousand (40,000) gallons will be charged.

(4) Budget billing. Any homeowner in the City who has timely paid his or her water bill for the prior twelve (12) months may be eligible for budget billing, as defined herein. Homeowners may apply for budget billing on forms provided by the City. New homeowners may apply for budget billing based upon previous annual average consumption at that address. Each year, in March, the next year's budget billing amount shall be computed; any underpayment shall be billed to the homeowner; any overpayment shall be credited to the homeowner.

(5) Commercial, municipal potable, irrigation, nonpotable irrigation, industrial, mixed use, private fire, bulk and schools monthly fixed charge by meter size. Effective January 1, 2014, the following monthly fixed charge shall be billed to all water accounts, whether there is water usage or not:

<i>Meter Size</i>	<i>Charge</i>
Three-fourths-inch meter	\$ 12.98
One-inch meter	21.5
One-and-one-half-inch meter	69.1
Two-inch meter	86.5
Three-inch meter	324.45
Four-inch meter	540.67
Six-inch meter	1,081.45

(6) Commercial, industrial, mixed use, municipal potable, private fire, bulk and nonpotable irrigation volume-based water rates monthly charge per one thousand (1,000) gallons of usage.

Effective January 1, 2014, the following monthly volume-based charge will be added to the monthly fixed charge as stated in Paragraph (5) above.

a. The monthly volume-based water rates shall be as follows for all base rate categories:

Commercial, industrial, mixed use	\$4.60
Municipal potable	5.1
Private fire (there is no charge for water for fire protection purposes)	0.0
Bulk	5.1
Nonpotable irrigation	2.7

b. The monthly volume-based water rates shall be as follows for all water usage from one hundred one percent (101%) up to and including one hundred ten percent (110%) above the base rate category:

Commercial, industrial, mixed use	\$5.06
Municipal potable	5.7
Private fire (there is no charge for water for fire protection purposes)	0.0
Bulk	5.7
Nonpotable irrigation	3.0

c. The monthly volume-based water rates shall be as follows for all water usage from one hundred eleven percent (111%) up to and including one hundred fifteen percent (115%) above the base rate category:

Commercial, industrial, mixed use	\$5.31
Municipal potable	6.0
Private fire (there is no charge for water for fire protection purposes)	0.0
Bulk	6.0
Nonpotable irrigation	3.2

d. The monthly volume-based water rates shall be as follows for all water usage from one hundred sixteen percent (116%) up to and including one hundred twenty-five percent (125%) above the base rate category:

Commercial, industrial, mixed use	\$5.77
Municipal potable	6.5
Private fire (there is no charge for	0.0

water for fire protection purposes)	
Bulk	6.5
Nonpotable irrigation	3.4

e. The monthly volume-based water rates shall be as follows for all water usage from one hundred twenty-six percent (126%) and above the base rate category:

Commercial, industrial, mixed use	\$6.24
Municipal potable	7.0
Private fire (there is no charge for water for fire protection purposes)	0.0
Bulk	7.0
Nonpotable irrigation	3.7

f. Schools and HOAs, commercial, industrial or mixed use irrigation accounts with a separate tap volume-based water rates monthly charge per one thousand (1,000) gallons of usage: the monthly volume-based charge will be added to the monthly fixed charge as stated in Paragraph (5) above.

Schools	\$4.60
HOAs, commercial, industrial, mixed use irrigation - separate tap - 0 to 500,000 gallons	5.9
HOAs, commercial, industrial, mixed use irrigation - separate tap - 500,000 gallons and above	6.5

(Ord. 1964 §14, 2008; Ord. 2102 §1, 2011; Ord. 2124 §1, 2011; Ord. 2149 §2, 2013; Ord. 2167 §1, 2013)

Sec. 13-4-140. Service outside the City.

Any existing water service outside the City limits is hereby approved. Monthly water rates for existing service shall be double the rate for service within the City. No new service outside the City limits will be provided. (Ord. 1044 §1 (part), 1980; Ord. 1542 §5(part), 1998)

Sec. 13-16-20. Wastewater Facilities Replacement Fund.

A reserve fund called the Wastewater Facilities Replacement Fund is established within the Wastewater Utility Fund for the purpose of providing sufficient funds to be expended for obtaining and installing equipment, accessories and appurtenances during the useful life (twenty [20] years) of the wastewater treatment facilities necessary to maintain the capacity and performance for which such facilities are designed and constructed. (Ord. 1270 §4, 1987; Ord. 2113 §9, 2011)

Sec. 13-16-25. Wastewater plant investment fees and connection charges; schedule.

(a) A wastewater plant investment fee shall be paid for each separate tap to any sanitary sewer line within the City. The amount of the fee shall be based on the size of the water service line. The wastewater plant investment fees shall be as follows:

- (1) Single-family detached; mixed-use; commercial; industrial; and other uses not specifically

delineated herein:

<i>Tap Size</i>	<i>Fee</i>
Three-quarter-inch tap	\$ 4,650.00
One-inch tap	7,635.00
One-and-one-half-inch tap	15,470.00
Two-inch tap	24,752.00
Three-inch tap	49,504.00
Four-inch tap	85,085.00

(2) Multi-family dwellings, including apartment buildings or condominiums; single-family attached (such as duplexes or townhouses); and single-family detached with carriage unit *:

* Carriage unit that is detached from the main structure will pay the fee for additional unit. If the carriage unit is restricted to prohibit rental of the unit separate from the main structure, fees as detailed in Paragraph (1) above, shall apply.

First living unit	\$4,650.00
Each additional unit within building *	3,147.00

(3) Mobile home parks - per user unit: four thousand six hundred fifty dollars (\$4,650,00).

(4) For any connection greater than two (2) inches, the owner shall provide the City with an acceptable wastewater impact report authorized by a registered professional engineer experienced in wastewater services in addition to payment of the wastewater plant investment fee.

(b) A charge in the amount of one hundred dollars (\$100,00) shall be made for each separate four-inch tap made by the City to any line within the City, regardless of whether the wastewater tap is new or whether it is made to replace an existing wastewater connection of the same size. A six-inch tap, regardless of whether the wastewater tap is new or whether it is made to replace an existing wastewater connection of the same size, shall be made by the contractor into a City manhole and paid for by the contractor.

(c) The developer will make all taps in new developments. A twenty-five-dollar inspection fee will be charged for each tap to an existing line.

(d) No new service lines will be provided outside the corporate limits of the City.

(e) A wastewater plant investment fee shall be paid for each separate tap to any sanitary sewer line within the South Platte Basin of the City. The amount of the fee shall be based on the size of the water service line. The South Platte Wastewater Plant Investment Fees shall be as follows:

(1) Single-Family Residential Equivalent (SFRE): five thousand two hundred sixty dollars (\$5,260.00).

(2) All sewer connections which are not Single-Family Residential Equivalents:

<i>Tap Size</i>	<i>Fee</i>
Three-fourths-inch tap	\$ 9,994.00
One-inch tap	23,670.00
One-and-one-half-inch tap	57,860.00
Two-inch tap	105,200.00
Three-inch tap	220,920.00
Four-inch tap	399,760.00

(3) For water service taps six (6) inches or larger, the number of SFREs for calculating the sewer connection charge shall be determined from the following formula:

$$\text{SFREs} = \frac{\text{Flow} \times \text{F} + \text{BOD} \times \text{B} + \text{SS} \times \text{S} + \text{TKN} \times \text{T}}{0.5175 \quad 0.2359 \quad 0.1696 \quad 0.0770}$$

Where:

Flow = estimated flow, gpd (peak month)

BOD = estimated BOD, lbs/day (peak month)

SS = estimated SS, lbs/day (peak month)

TKN = estimated TKN, lbs/day (peak month)

The Metro Wastewater Reclamation District shall provide the estimated flow, BOD, SS and TKN information for each new wastewater connection which is subject to the above formula. (Ord. 1964 §14, 2008; Ord. 2113 §2, 2011; Ord. 2125 §9, 2011; Ord. 2149 §3, 2013)

Sec. 13-16-30. Determination of total annual costs and maintenance.

The City or the City Manager shall determine the total annual costs of operations and maintenance of the wastewater system which are necessary to maintain the capacity and performance, during the service life of the treatment works, for which such works were designed and constructed. The total annual cost of operation and maintenance shall include, but need not be limited to, labor, repairs, equipment replacement, maintenance, necessary modifications, power, sampling, laboratory tests and a reasonable contingency fund. (Ord. 1964 §14, 2008; Ord. 2088 §1, 2011; Ord. 2113 §9, 2011)

Sec. 13-16-40. Determination of individual wastewater contribution percentage.

(a) The City or the City Manager shall determine for each user or user class the average daily volume of wastewater discharged to the wastewater system for the billing months of December, January and February, which shall then be divided by the average daily volume of all wastewater discharged to the wastewater system to determine such user's volume contribution percentage. The amount used as the total average daily volume of wastewater shall exclude infiltration and inflow.

(b) The minimum flow charge for residential customers is five thousand (5,000) gallons; the maximum flow charge is fifteen thousand (15,000) gallons. The minimum flow charge for any customer that qualifies for a discount as a senior citizen or permanently disabled under Paragraph 13-4-130(3) is three thousand (3,000) gallons; the maximum flow charge is fifteen thousand (15,000) gallons.

(c) New residential accounts shall be charged either the minimum flow charge of five thousand (5,000) gallons or three thousand (3,000) gallons, as applicable, until the average daily volume is calculated the following winter.

(d) All other accounts shall be charged based on actual water usage each month until the following winter when an average daily volume is calculated.

(e) The City or the City Manager shall determine for each user or user class the average daily poundage of five-day, twenty-degree Centigrade biochemical oxygen demand (BOD) discharge to the wastewater system to determine such user's BOD contribution percentage. (Ord. 1270 §3(part), 1987; Ord. 1660 §10, 2000; Ord. 2113 §9, 2011)

Sec. 13-16-50. Surcharge.

(a) The City will assess a surcharge for all nonresidential users discharging wastes with BOD, TSS and/or any other parameter strengths greater than the average residential user.

(b) The surcharge shall be in an amount sufficient to cover:

(1) The cost of treating their above-average strength wastes, such as, but not limited to, fat, oil, grease, petroleum, oil, sand and/or other wastes;

(2) The cost of accelerated sanitary sewer line cleaning on the City's sanitary sewer line providing service to the user resulting from the nonconnection of the establishment or facility to a required grease interceptor, sand-oil separator, trap and/or pretreatment device;

(3) The cost of inspection, sampling and/or analysis; and

(4) The cost incurred by the City for maintenance and cleaning of grease interceptor, sand-oil separator, trap and/or pretreatment device on behalf of the user.

(c) The City may assess other surcharges as the City may deem necessary to carry out the requirements contained in the Chapter. These surcharges shall be related solely to the matters covered in this Chapter and are separate from all other fees, fines and penalties chargeable by the City. The formulae for calculating any surcharges shall be established by the Utilities Director and adopted by the City Council. The amounts of any such surcharges shall be set forth in the City's annual fee resolution. (Ord. 1270 §3(part), 1987; Ord. 1542 §10(part), 1998; Ord. 2113 §9, 2011; Ord. 2149 §4, 2013)

Sec. 13-16-55. Pretreatment charges and fees.

(a) The City may adopt reasonable fees for reimbursement of costs of setting up and operating the City's pretreatment program, which may include:

(1) Fees for industrial wastewater discharge permit applications, including the cost of processing such applications;

(2) Fees for monitoring, inspection and surveillance procedures, including the cost of collecting and analyzing a user's discharge and reviewing monitoring reports submitted by users;

(3) Fees for reviewing and responding to accidental discharge procedures and construction;

(4) Fees for filing appeals; and

(5) Other fees as the City may deem necessary to carry out the requirements contained herein. These fees relate solely to the matters covered by this Article and are separate from all other fees, fines and penalties chargeable by the City.

(b) The applicable pretreatment charges and fees shall be set forth in the annual fee resolution as approved by the City Council. (Ord. 1735 §10, 2002; Ord. 2113 §9, 2011)

Sec. 13-16-60. Billing for wastewater service charge; discontinuance of service.

The City shall submit monthly statements to the user for the user's wastewater service charge. The wastewater service charge may be included with the monthly water and/or wastewater utility billing. Should any user fail to pay the user wastewater service charge within twenty (20) days of the billing date, the City may stop the wastewater service to the property. (Ord. 1270 §5, 1987; Ord. 1542 §10(part), 1998; Ord. 2113 §9, 2011)

Sec. 13-16-70. Wastewater service charges; rates; notification.

(a) Wastewater service charge. All wastewater service charges for processing of wastewater in the City shall be assessed pursuant to a schedule of fees to be set by ordinance duly adopted by the City Council after review of such fee schedule as the City Council from time to time deems necessary. Every user of the City wastewater system will be charged the monthly wastewater service charge, whether matter is discharged into the system or not. This service charge will be added to either the flat wastewater rates as calculated pursuant to either Subsection (b) or (c) below, as applicable.

(b) Effective January 1, 2014, the following shall be the schedule of monthly wastewater service rates for the processing of wastewater in the City:

(1) Residential monthly fixed charge. The following monthly fixed charge shall be billed to all residential wastewater accounts, whether there is wastewater usage or not:

Residential	\$9.15
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(2) Commercial, industrial, mixed use and schools monthly fixed charge by meter size. The following monthly fixed charge shall be billed to all commercial, industrial, mixed use, school wastewater accounts, whether there is wastewater usage or not:

<i>Meter Size</i>	<i>Fee</i>
Three-fourths-inch meter	\$ 17.39
One-inch meter	41.18
One-and-one-half-inch meter	100.65
Two-inch meter	183.00
Three-inch meter	384.30
Four-inch meter	695.40
Six-inch meter	1,875.75

(c) Flat wastewater rate - metered water usage. Effective January 1, 2014, all users of the wastewater system who are metered for water usage will be billed a flat wastewater rate each month, based on the average water usage as reflected in the prior December, January and February water bills. This flat wastewater rate may be changed annually and will vary in amount, based on

classification. Monthly volume-based rates per one thousand (1,000) gallons of water usage are as follows:

Residential	\$4.24
Commercial	5.17
Municipal	4.24

(d) Flat wastewater rate - nonmetered water usage. Effective January 1, 2014, those users of the wastewater system who are not metered for water usage will be billed a flat wastewater rate each month. The flat wastewater rates will vary in amount, based on classification. The monthly flat wastewater rates for users of nonmetered water are as follows:

Residential	\$22.55
Multi-family Number of dwelling units x	22.55
Commercial (discharging restrooms only)	22.95
Commercial (discharging other than restrooms)	45.91

(e) Commercial property - rated based on actual water usage. Effective January 1, 2014, any owner of commercial property in the City which receives City wastewater service may request to be billed a wastewater rate based on actual water usage each month. Such request shall be made annually on forms provided by the City. The effective date for such billing shall be the first full monthly billing after such written request is approved. Monthly volume-based rates per one thousand (1,000) gallons of water usage for approved commercial users shall be as follows:

Commercial	\$5.17
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(Ord. 1964 §14, 2008; Ord. 2102 §3, 2011; Ord. 2113 §9, 2011; Ord. 2124 §2, 2011; Ord. 2149 §5, 2013; Ord. 2167 §2, 2013)

Sec. 13-16-80. Review of wastewater service charge.

The City shall review the total annual cost of operation and maintenance as well as each user's wastewater contribution percentage not less often than every two (2) years and will revise the system as necessary to assure equity of the service charge system established herein and to assure that sufficient funds are obtained to adequately operate and maintain the wastewater treatment works. The City shall apply excess revenues collected from a class of users to the costs of operation and maintenance attributable to that class for the next year and adjust the rate accordingly. If a significant user, such as an industry, has completed in-plant modifications which would change that user's wastewater contribution percentage, the user can present, at a regularly scheduled meeting of the governing body, such factual information, and the City shall then determine if the user's wastewater contribution percentage is to be changed. The City shall notify the user of its findings as soon as possible. (Ord. 1270 §6, 1987; Ord. 2113 §9, 2011)

Sec. 13-20-60. Storm drainage impact fee schedule.

The storm drainage impact fee shall be paid at the time of application for a building permit and shall be in accordance with a schedule of fees, rates and charges as adopted by the annual fee resolution, ordinance or otherwise. The storm drainage impact fee ("fee") shall be payable in the following amounts:

(1) For all property located within the OSP Area:

a. Single-family residence: three thousand six hundred eighty-five dollars (\$3,685.00) per dwelling unit;

b. Multi-family residence: one thousand eight hundred forty-five dollars (\$1,845.00) per unit; and

c. Nonresidential, commercial, mixed use or industrial: fifty-seven cents (\$0.57) per square foot of impervious surface area, including all remodels and/or additions of one thousand (1,000) square feet or greater.

(2) For all property located outside the OSP Area:

a. Single-family residence: one thousand four hundred twenty dollars (\$1,420.00) per dwelling unit;

b. Multi-family residence: seven hundred ten dollars (\$710.00) per unit; and

c. Nonresidential, commercial or industrial: forty-seven cents (\$0.47) per square foot of impervious surface area, including all remodels and/or additions of one thousand (1,000) square feet or greater. (Ord. 1907 §12, 2007; Ord. 2102 §4, 2011)

Sec. 13-20-80. Review of storm drainage impact fee.

The City Council shall review the amount of the stormwater impact fee provided for in this Article from time to time as it deems necessary, and may modify the amount thereof in accordance with a schedule of fees, rates and charges as adopted by the annual fee resolution, ordinance or otherwise. (Ord. 1633 §1, 2000; Ord. 2102 §4, 2011)

Sec. 13-20-81. Storm drainage maintenance fee; rates.

(a) The storm drainage maintenance fee shall be used solely for administration, engineering, professional services, design, installation, repair, maintenance, operation, management and improvement of storm drainage facilities in the City necessary for the Utility to reasonably manage storm drainage in the City.

(b) All storm drainage maintenance fee charges shall be assessed pursuant to a schedule of fees to be set by ordinance duly adopted by the City Council after review of such fee schedule as the City Council from time to time deems necessary. The following shall be the schedule of monthly storm drainage maintenance fees:

(1) Residential, commercial, municipal potable, municipal nonpotable, industrial, mixed use, bulk and schools monthly fixed charge by customer type. The following monthly fixed charges shall be billed to all water and sewer accounts. Effective January 1, 2014, the following monthly fixed charges shall be billed to all water and sewer accounts, whether there is water usage or not:

Single-family residence	\$2.12
Multi-family residence	2.7
Nonresidential, commercial, mixed use or industrial	6.0

Schools	6.0
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(Ord. 2102 §5, 2011; Ord. 2124 §3, 2011; Ord. 2149 §6, 2013; Ord. 2167 §3, 2013)



Staff Report

File #: ID-266-14, **Version:** 1

Department of City Clerk

Reference: Schedule a Special City Council Meeting on November 25, 2014 at 6:00 p.m.

To: Mayor Richard N. McLean and Members of City Council

Through: Manuel Esquibel, City Manager

Prepared By: Natalie Hoel, City Clerk

Date Prepared: November 13, 2014

Schedule a Special City Council Meeting on November 25, 2014 at 6:00 p.m. to review the following items:

- Fringe Benefits
- Amend City Council Rules and Procedures
- State Historic Fund Grant Agreement for Bromley Farm Phase 1 Interior
- Adams County Grant Agreement for Pheasant Ridge Park Beautification Project
- Adams County Grant Agreement for Northgate Open Space Design and Construction



Staff Report

File #: ID-268-14, **Version:** 1

Reference: Executive Session

To: Mayor Richard N. McLean and Members of City Council

Through: Manuel Esquibel, City Manager